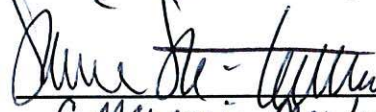



APPROVED AS TO FORM:

By: 
for Scott C. Smith
City Attorney

Date: 7/22/10

By: BAKER RANCH PROPERTIES, LLC,
a California limited liability company

By: 
Its: Co-Managing Member
Date: 10/19/10

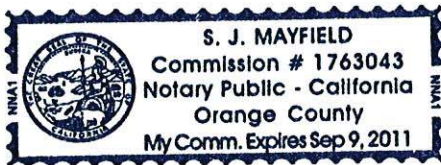
By: 
Its: Co-Managing Member
Date: 10/19/10

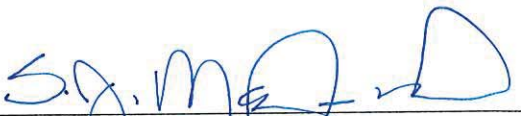
STATE OF CALIFORNIA)
) ss:
COUNTY OF ORANGE)

On October 19, 2010, before me, S. J. Mayfield, Notary Public, personally appeared Michael M. Watkins and Larry Tucker, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.





Signature of Notary Public

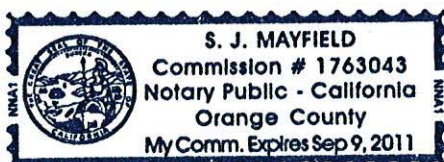
[Seal]

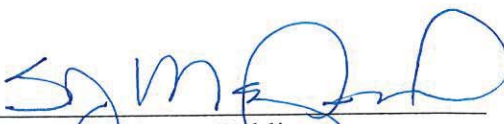
STATE OF CALIFORNIA)
) ss:
COUNTY OF ORANGE)

On October 19, 2010, before me, S. J. Mayfield, Notary Public, personally appeared Colm Macken and Robert J. Yoder, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.





Signature of Notary Public

EXHIBIT A

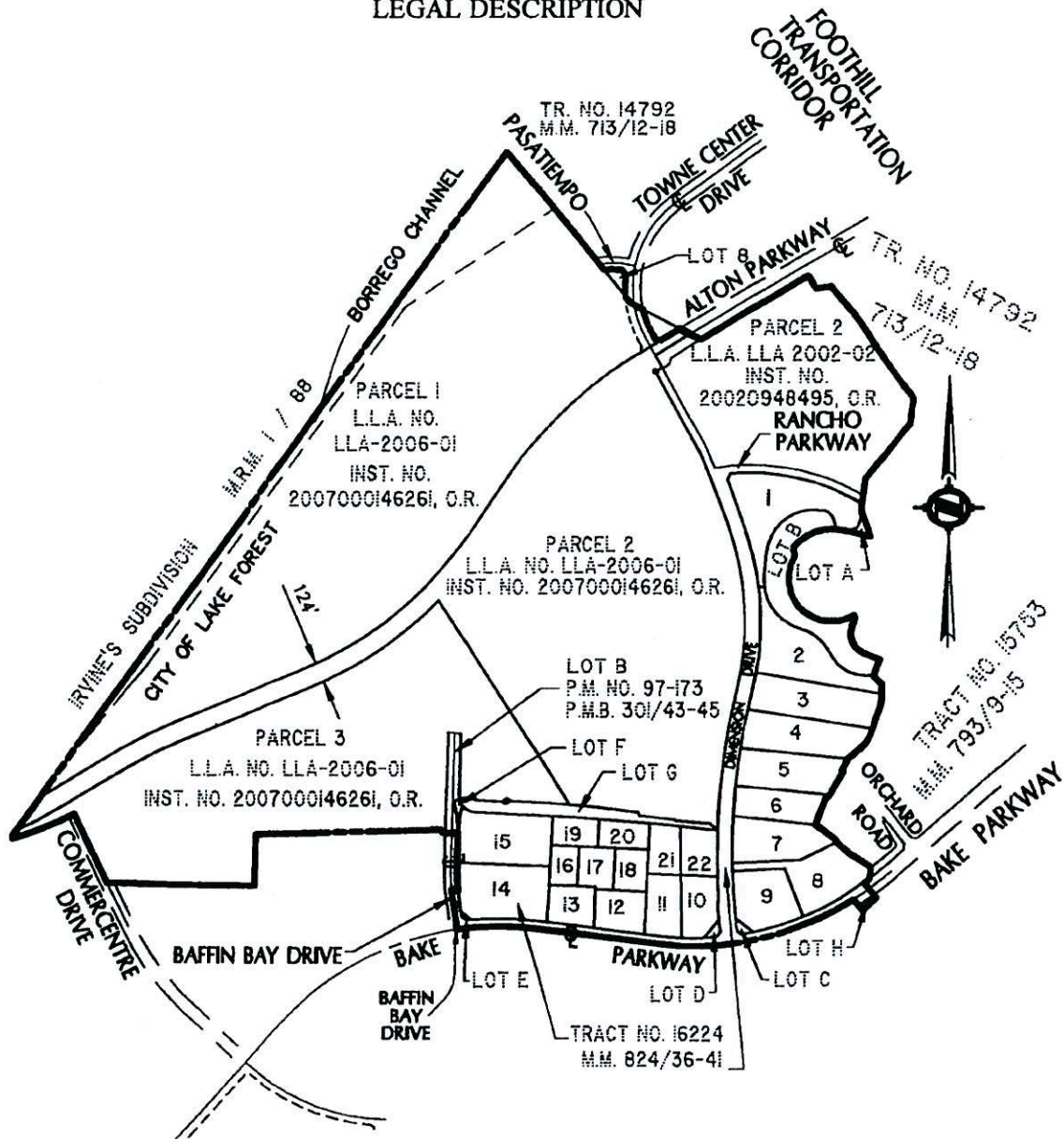
Legal Description of the Property

810665.6/80982.10002

EXHIBIT A

Legal Description of the Property

**EXHIBIT A
LEGAL DESCRIPTION**



PARCELS 1 THROUGH 3, INCLUSIVE, OF LOT LINE ADJUSTMENT NO. LLA-2006-01 IN THE CITY OF LAKE FOREST, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED MARCH 7, 2007, AS INSTRUMENT NO. 2007000146261 OF OFFICIAL RECORDS OF SAID COUNTY.

PARCEL 2 OF LOT LINE ADJUSTMENT NO. LLA-2002-02 IN THE CITY OF LAKE FOREST, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED OCTOBER 30, 2002, AS INSTRUMENT NO. 20020948495 OF OFFICIAL RECORDS OF SAID COUNTY.

PARCEL B OF PARCEL MAP NO. 97-173 AS SHOWN ON A MAP FILED IN BOOK 301, PAGES 43, 44 AND 45, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALL OF TRACT NO. 16224 AS SHOWN ON A MAP FILED IN BOOK 824, PAGES 36 THROUGH 41, INCLUSIVE, OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

LOT 8 OF TRACT NO. 14792 AS SHOWN ON A MAP FILED IN BOOK 713, PAGES 12 THROUGH 18, INCLUSIVE, OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Scale: 1"=1,000'

LEGAL DESCRIPTION

Source: Hunsaker & Associates Irvine, Inc.

EXHIBIT B
Public Benefits

**EXHIBIT B
PUBLIC BENEFITS**

TABLE OF CONTENTS

	<u>Page</u>
A. Definitions and Attachments	1
B. Public Facilities	2
1. City Facilities Fee	2
2. Sports Park Site Dedication	2
3. General Requirements for City Facilities, City Facilities Fees, and Related Credits	9
4. LFTM Improvements	11
C. Park Dedication Requirement	12
1. Credit Toward Park Dedication Requirement	14
2. Location and Conveyance of Neighborhood Parks	14
3. Location of Private Open Space	15
4. Maintenance of Neighborhood Parks	15
5. Title and Condition of Land Dedicated for Neighborhood Parks.	15
D. School Facilities	15
E. Alton Parkway	16
1. Early Construction of "City Alton"	16
2. The Alton Construction Process	16

EXHIBIT B PUBLIC BENEFITS

In addition to complying with those Project conditions of approval which are designed to mitigate the significant environmental impacts of the Project, Owner has committed by this Agreement to contribute to certain "Public Benefits."¹ The Public Benefits consist of specified contributions by Owner toward land, improvements, and funding to further the development of (a) the "Public Facilities" (consisting of the City Facilities, the LFTM Improvements, parkland as described in Paragraph C below², and the Alton Segment), and (b) the School Facilities, all as described in this Exhibit B. Owner shall make contributions toward the Public Benefits as set forth in this Exhibit B. The Public Benefits described in Exhibit B include not only obligations of Owner, but, as part of a complex plan to deliver to the community road and park improvements earlier than would otherwise be possible, reciprocal obligations of the City to facilitate those early improvements.

- A. Definitions and Attachments.** Capitalized terms used in this Exhibit are either parenthetically defined in this Exhibit or defined in Section 5 of this Agreement. The attachments to this Exhibit B are:

Attachment	Description
1a	Alternative Onsite Sports Park Sites
1b	Baker Rancho Parkway Site
2	City Facilities Fee Credit Statement
3	City Facilities Fee Credit Letter
4	Central Linear Park and Borrego Linear Park
5	Neighborhood Park Improvement Criteria
6	School Agreement
7	Alton Segment
8	City Alton Improvements
9	Depiction of Detention Basin
10	Depiction of Alton IOD Area
11	Acceleration Retrofit Costs
12	Alton Alignments – Centerline Intersections
13	Alton Phase 1 and Alton Phase 2
14	Borrego Improvements Area, Depiction of Box Culvert

¹ In the case of the LFTM Program discussed below, the Public Benefits include Project mitigation and additional and/or accelerated improvements beyond Project mitigation which have been blended into a single improvement program.

² In the case of parkland, the Public Benefits include compliance with the City's standard park dedication requirements, as well as land conveyances and improvements either in excess of or outside the scope of those requirements.

B. Public Facilities. Owner's contribution toward development of the Public Facilities shall be limited to the following:

1. **City Facilities Fee.** Owner shall pay a fee as a contribution toward the development of the City Facilities (the "City Facilities Fee") in the amount of \$27,365 for each Unit constructed as part of the Project. Owner's obligation to pay the City Facilities Fee is subject to other credits and adjustments as provided within this Agreement, including, but not limited to, the credit against the City Facilities Fee provided in Paragraph E2i(iv) below.³

The City Facilities Fees applicable to each Unit shall be due concurrently with the issuance of the building permit allowing construction of that Unit. The City may commit Owner's City Facilities Fees to either (1) acquisition of the Baker Rancho Parkway Site for the Final Sports Park Site or (2) construction of the Public Facilities on land either (a) acquired by the City for the Baker Rancho Parkway Site, (b) dedicated by Owner or other OSA Landowners for the Public Facilities, or (c) otherwise acquired for development of the Public Facilities within the boundaries of the Opportunities Study Area.

2. **Sports Park Site Dedication.** The final location of the Sports Park (the "Final Sports Park Site") shall be either (a) the "Onsite Sports Park Site" discussed in Paragraph B2a or (b) the "Baker Rancho Parkway Site" discussed in Paragraph B2b. Except as provided in Paragraph B2c below, the Final Sports Park Site shall be conveyed to the City through an irrevocable offer to dedicate the Final Sports Park Site to the City (the "Park Site Offer").⁴ The selection of the Final Sports Park Site shall occur as follows:

- a. **Onsite Sports Park Site.** The Final Sports Park Site may be located within the Property (an "Onsite Sports Park Site") and, if so, shall be one of the two "Alternative Onsite Sports Park Sites" which are identified on Attachment 1a.

- i) **Location of Alternative Onsite Sports Park Sites.** The general locations of the Alternative Onsite Sports Park Sites are graphically depicted on Attachment 1a and have been determined by the Parties to satisfy their mutual requirements with respect to the general location of a Final Sports Park Site.

³ For purposes of clarification, no City Facilities Fee shall be due on non-residential space in a Mixed Use District (i.e. that space is not included in the definition of a "Unit").

⁴ The Park Site Offer shall permanently restrict the use of Onsite Sports Park Site to uses typically associated with community sports parks, such as a multi-purpose recreational facility, lighted ball fields/soccer fields, multi-purpose sport courts, and uses ancillary to those principal uses.

- ii) *Size of Alternative Onsite Sports Park Sites.* It is the intent of the Parties that the Alternative Onsite Sports Park Sites each consist of seventeen (17) Net Useable Acres.⁵
- iii) *Designation and Dedication of Onsite Sports Park Site.* Unless the Parties have previously agreed to the terms for delivery of the Baker Rancho Parkway Site pursuant to Paragraph B2b below, Owner shall designate in the First Tentative Map Submittal Package which of the Alternative Onsite Sports Park Sites it has determined to be the Final Sports Park Site.
- iv) *Park Site Offer.* The Park Site Offer shall be made no later than the earlier of (i) five (5) days after the City's approval of the First Tentative Map or (ii) the issuance of the first residential building permit for the Project (other than for a model home or to comply with the Borrego Condition).⁶ Neither the designation nor the dedication of an Onsite Sports Park Site shall be necessary if the "Baker Rancho Parkway Site" becomes the Final Sports Park Site through the processes described below.
- v) *Delivery⁷ of Onsite Sports Park Site.* If the Final Sports Park Site is an Onsite Sports Park Site, Owner shall deliver that Final Sports Park Site to the City in Superpad Condition before the issuance of the three hundred first (301st) residential building permit for the Project (the "Delivery Deadline").⁸
- vi) *Issuance of Building Permits After Dedication of Onsite Sports Park Site .* If Owner has made a Park Site Offer and offered delivery of an Onsite Sports Park Site as provided in Paragraph

⁵ Attachment 1a generally depicts areas for the Alternative Onsite Sports Park Sites which are each greater than 17 acres. If the Final Sports Park Site is one of the Alternative Onsite Sports Park Sites, the specific 17 Net Useable Acres to be dedicated will be determined by Owner from within the area designated for that site on Attachment 1a. The actual size of the dedicated property may be greater than seventeen (17) acres, provided that the number of Net Useable Acres complies with this Section and that all dedicated acres are contiguous.

⁶ The Park Site Offer shall contain a provision that it shall not become effective until after the later of (1) the expiration of the statutes of limitations for all possible legal challenges to the approval of the First Tentative Map or any other approval requested by the First Tentative Map Submittal Package and (2) if litigation challenging approval of the First Tentative Map or any other approval requested by the First Tentative Map Submittal Package is filed, the date upon which all such litigation is terminated through settlement, dismissal, or judgment and the time for any applicable appeals has passed.

⁷ Any reference within this Agreement to delivery of any property to be dedicated to the City means that by the date scheduled for delivery, Owner shall provide City with written notice that the property is in the condition required by this Agreement and that the City may accept the applicable offer of dedication.

⁸ If the process set forth in Paragraph B2b below for the consideration of the conveyance of the Baker Rancho Parkway Site begins before the issuance of the 301st residential building permit for the Project, the Delivery Deadline shall be extended to the 30th day after the conclusion of that process as set forth in Paragraph B2b. The extension of the Delivery Deadline shall not delay either the approval or recordation of any Final Map or the issuance of requested building permits for Residential Units, including building permits in excess of the 301st building permit for a Residential Unit.

B2a(v) above, Owner shall immediately upon such delivery be entitled to the issuance of building permits in excess of the 301st building permit even if the City does not accept delivery for any reason, including the possibility that it will acquire the Baker Rancho Parkway Site pursuant to Paragraph B2c below and allow the Park Site Offer to terminate as provided in Paragraph B2h below.

b. The Baker Rancho Parkway Site. The "Baker Rancho Parkway Site" is generally depicted on Attachment 1b. The City has satisfied itself that the Baker Rancho Parkway Site will adequately meet the needs of the City for the Final Sports Park Site, irrespective of any differences in size,⁹ configuration, and topography from the Alternative Onsite Sports Park Sites. The Baker Rancho Parkway Site shall become the Final Sports Park Site if, at any time before the Delivery Deadline, including any extension of the Delivery Deadline, (1) Owner provides City with notice that Owner intends to make, or cause to be made, an irrevocable offer of dedication to the City of the Baker Rancho Parkway Site (the "Baker Notice"), rather than of an Onsite Sports Park Site, and (2) actual or deemed agreement on the terms of the conveyance of the Baker Rancho Parkway Site is reached as set forth in the following subparagraphs:

- i) *Baker Notice Terms.* The Baker Notice shall state the terms upon which Owner would offer to dedicate or cause to be dedicated the Baker Rancho Parkway Site to the City (the "Baker Notice Terms"). The Baker Notice Terms shall include, but are not limited to, provisions related to the phasing of conveyance to the City, the orderly completion of sand and gravel operations on the Baker Rancho Parkway Site, the size, configuration, and timing and condition of the delivery of the Baker Rancho Parkway Site to the City.
- ii) *City Acceptance of Baker Notice Terms.* City shall have sixty (60) days after receipt of the Baker Notice to determine if City will accept the Baker Notice Terms. Subject to all other provisions of this Paragraph B2, if, at the conclusion of those sixty (60) days, the City has either (1) accepted the Baker Notice Terms in writing, (2) not submitted to Owner a written counteroffer containing different terms than the Baker Notice Terms, or (3) not rejected the Baker Notice Terms in writing, the Baker Notice Terms shall be deemed accepted and the Baker Rancho Parkway Site shall become the Final Sports Park Site.

⁹ The Baker Rancho Parkway Site is approximately 15 acres in size.

Within thirty (30) days after any such acceptance, Owner shall make or cause to be made an irrevocable offer to dedicate the Baker Rancho Parkway Site to the City consistent with the Baker Notice Terms.

- iii) *City Rejection of Baker Notice Terms.* If City rejects the Baker Notice Terms, Owner shall, no later than the later of (1) thirty (30) days after City's rejection of the Baker Notice Terms and (2) the time established in Paragraph 2a(iv) above for the making of the Park Site Offer, make an irrevocable offer to dedicate to the City the Alternative Onsite Sports Park Site which was designated by Owner concurrently with the submittal of the First Tentative Map Submittal Package
 - iv) *City Counteroffer.* If, however, within sixty (60) days after receipt of the Baker Notice, the City submits to Owner a written counteroffer containing different terms than the Baker Notice Terms (the "City Counteroffer"), then Owner shall have fifteen (15) days to accept City Counteroffer, reject City Counteroffer, or provide City with written notice to meet and confer within fifteen (15) days to determine if the Parties can agree to the terms upon which the Baker Rancho Parkway Site shall become the Final Sports Park Site. If within five (5) business days after this meeting Owner and City staff reach written agreement on those terms, the City shall have thirty (30) additional days to provide City Council approval of those terms. If the Parties reach final agreement in this manner, the Baker Rancho Parkway Site shall become the Final Sports Park Site. If the Parties do not reach agreement in this manner the Baker Rancho Parkway Site shall not become the Final Sports Park Site.
 - v) *Delivery of Baker Rancho Parkway Park Site.* If the Baker Rancho Parkway Site is the Final Sports Park Site, the timing of delivery of the Baker Rancho Parkway Site to City and its condition upon delivery shall be upon terms and conditions stated in the Baker Notice or the negotiated terms following the City Counteroffer, as applicable.
- c. Direct City Purchase of Baker Rancho Parkway Site. The following conditions shall apply to either (1) a City option (the "Baker Option") to directly purchase the Baker Rancho Parkway Site or (2) the direct purchase by the City of the Baker Rancho Parkway Site.
- i) *Option to Purchase.* If, prior to Owner's delivery of an Onsite Sports Park Site in Superpad Condition, (1) the City has entered into a Baker Option and (2) the City has provided Owner with

written notice of the Baker Option, including the term of the Baker Option, then:

- (1) If Owner has not yet made a Park Site Offer, Owner shall still make the Park Site Offer at the time required by this Agreement;
 - (2) If Owner has made a Park Site Offer, notwithstanding any other provision of this Agreement, Owner shall not have an obligation to deliver the Onsite Sports Park Site until the later of the issuance of the 301st residential building permit for the Project and twelve (12) months after the City has provided Owner with written notice that either the Baker Option has expired or the City will not exercise the Baker Option, at which time Owner shall deliver the Onsite Sports Park Site; and
 - (3) Any obligations of Owner or limitations on the issuance of building permits which are contingent upon Owner's delivery of the Onsite Sports Park Site shall be suspended until when and if twelve (12) months expire after the City has provided Owner with written notice that either the Baker Option has expired or the City will not exercise the Baker Option.
- ii) *Purchase.* If, prior to Owner's delivery of an Onsite Sports Park Site in Superpad Condition, the City has obtained title to the Baker Rancho Parkway Site directly from Baker Ranch Properties, LLC, whether through exercise of the Baker Option or otherwise,¹⁰ then:
- (1) If Owner has not yet made a Park Site Offer, Owner shall have no obligation to make a Park Site Offer or otherwise provide a Final Sports Park Site to the City;
 - (2) If Owner has made a Park Site Offer, that Park Site Offer shall terminate and Owner shall have no obligation to deliver the Onsite Sports Park Site to the City;
 - (3) Any obligations of Owner or limitations on the issuance of building permits which are contingent upon Owner's delivery of the Onsite Sports Park Site shall be permanently suspended; and
 - (4) Owner shall not be entitled to the Sports Park Fee Credit.

¹⁰ For purposes of this Paragraph B2c, City shall have until December 31, 2015, to obtain title to the Baker Rancho Parkway Site.

- d. Mapping Not Subject to Acceptance of Offer. Owner may process any number of Tentative¹¹ or Final Maps for all or any portion of the Property even though City has not accepted a Park Site Offer. City shall not delay regular processing and approval, signing, filing, or recording of any Tentative or Final Maps or any other Development Approval based upon the timing of City's acceptance of a Park Site Offer.
- e. Sports Park Fee Credit for Onsite Sports Park. Owner shall receive a City Facilities Fee Credit for making a Park Site Offer (the "Sports Park Fee Credit") for an Onsite Sports Park Site in the amount of Twenty Four Million Six Hundred and Fifty Thousand Dollars (\$24,650,000)¹² when that Park Site Offer is accepted by the City.
- f. Sports Park Fee Credit for Baker Rancho Parkway Site. If (1) the Final Sports Park Site is the Baker Rancho Parkway Site, (2) the Baker Rancho Parkway Site has been delivered to the City pursuant to the provisions of Paragraph B2b(v) above, and (3) the Rancho ROW has been offered for conveyance to the City pursuant to Section 8.25 of this Agreement, Owner shall receive a Sports Park Fee Credit in the amount of Twenty Four Million Six Hundred and Fifty Thousand Dollars (\$24,650,000).
- g. Sports Park Fee Credit for Baker Rancho Parkway Site if Rancho ROW Not Offered. If (1) the Final Sports Park Site is the Baker Rancho Parkway Site, (2) the Baker Rancho Parkway Site has been delivered to the City pursuant to the provisions of Paragraph B2b(v) above, and (3) the Rancho ROW has *not* been offered for conveyance to the City pursuant to Section 8.25 of this Agreement, Owner shall receive a Sports Park Fee Credit in the amount of Twenty Four Million Six Hundred and Fifty Thousand Dollars (\$24,650,000), less the actual cost, if any, of acquiring the Rancho ROW and completing the Offsite Improvements described in Section 8.25 of this Agreement, but only to the extent of the Offsite Improvements as described in Exhibit J.
- h. Termination of Park Site Offer. Any Park Site Offer shall terminate if either (1) it is rejected by the City, (2) the City has not accepted¹³ the Park Site Offer within ninety (90) days after Owner has presented the Final Sports Park Site to the City for delivery in the condition required by this Agreement or in the Baker Notice Terms, as the case may be,

¹¹ As noted within this Agreement, the "First Tentative Map" may consist of multiple Tentative Maps filed and processed concurrently and which together provide for the subdivision of the entire Property.

¹² The Sports Park Fee Credit was calculated by multiplying 17 (the number of acres of the Alternative Sports Park Sites) times \$1,450,000.

¹³ "Acceptance" shall consist of formal acceptance of the Park Site Offer by the City and the recordation by the City of that acceptance in order to allow transfer to the City of legal title to the Final Sports Park Site.

or (3) the occurrence of an event which under law or any agreement between the Parties results in termination of the Park Site Offer. Upon any termination of a Park Site Offer:

- i) With respect to the Park Site Offer, the Sports Park, and the Final Sports Park Site, Owner shall be relieved of all then-existing obligations and shall have no further obligation of any nature;
 - ii) No restrictions on the issuance of permits or the granting of Development Approvals due to the termination of a Park Site Offer shall be effective;
 - iii) The processing of any applications for Development Approvals or the issuance of Development Approvals shall not be delayed or withheld as a result of the termination of the Park Site Offer;
 - iv) With respect to a Park Site Offer for an Onsite Sports Park Site, Owner shall be entitled to develop that site; and
 - v) City shall promptly record in the Official Records of the County a relinquishment of the Park Site Offer.
- i. Reversion of Onsite Sports Park Site. Any Park Site Offer for an Onsite Sports Park Site shall contain a provision that title to the Final Sports Park Site shall revert¹⁴ to Owner if the City either:
- (a) fails to begin improvements to the Final Sports Park Site within twenty-four (24) months after the earlier of (i) the issuance of building permits for 70% of the total overall units approved by the City as part of the First Tentative Map process for the five (5) OSA member projects or (ii) twelve (12) years from the Effective Date, or
 - (b) after improvements to the Final Sports Park Site have begun, fails to diligently continue construction until completed.
- j. Maximum Units After Termination or Reversion. Upon any termination of a Park Site Offer for an Onsite Sports Park Site or the reversion to Owner of title to an Onsite Sports Park Site, the portion of the Property included within the applicable Onsite Sports Park Site may be developed, at Owner's sole election, up to the full extent of its underlying land use designations and development standards contained in the Existing Land Use Regulations, including the Planned Community Text, and any Subsequent Development Approvals, including the First Tentative Map. Under those circumstances, the

¹⁴ Any such reversion shall terminate the Park Site Offer for all purposes under this Agreement.

maximum number of Residential Units which Owner may build as part of the Project as determined by the City Council pursuant to Section 8.7 of this Agreement shall immediately and automatically increase to the full extent permitted by those underlying land use designations and development standards without further action of the City Council.

3. **General Requirements for City Facilities, City Facilities Fees, and Related Credits.**

- a. Adjustments to City Facilities Fee and City Facilities Fee Credit. The City shall, on July 1st of each year commencing in 2011 (the "Adjustment Date"), adjust the City Facilities Fee and the City Facilities Fee Credit (the "Cost Adjustment") to reflect changes in the Engineering News-Record Building Cost Index for the Los Angeles area (the "ENR Index") between July 1, 2010, and the then current Adjustment Date. If the ENR Index ceases to be published, the City shall select a successor third-party index which is designed to reflect generally-accepted changes in the cost of construction in Southern California. The Cost Adjustment shall be applied only to :
 - i) Those City Facilities Fees which may become due after the Adjustment Date; and
 - ii) The per acre amount of the Sports Park Fee Credit, which is agreed to be , \$1,450,000 per Net Useable Acre as of the Effective Date, if City has not yet accepted a Park Site Offer and taken such action as is required of the City to complete the legal transfer of title to the Final Sports Park Site to the City.
- b. Application of Credits. City Facilities Fee Credits earned pursuant to this Agreement shall be applied at the time that building permits are issued for Units which are obligated to pay the City Facilities Fee and shall continue to be so applied until exhausted. City Facilities Fees Credits earned shall be reflected in a "Fee Credit Statement." Each Fee Credit Statement shall be substantially in the form of Attachment 2.

Each Fee Credit Statement shall specify the current amount of City Facilities Fee Credits earned by and available to Owner. All Fee Credit Statements issued pursuant to this Agreement will convert the total dollar amount of City Facilities Fee Credits earned to date into a discrete number of Units based on the applicable City Facilities Fee per Unit in effect at the time the City Facilities Fee Credit is earned. Should any Fee Credit Statement show a residual balance which is less than the full amount of the then applicable City Facilities Fee per

Unit, that amount will be paid in cash to Owner with the issuance of the Fee Credit Statement.¹⁵

Owner may elect, at any time, to pay the City Facilities Fee for a Unit, and to reserve available City Facilities Fee Credits for application to future City Facilities Fee obligations pursuant to the process outlined below.

Fee Credit Statements shall be maintained and updated as follows:

- i) *Credits Earned.* Each time City Facilities Fee Credits are earned, the City shall issue to Owner a Fee Credit Statement documenting the amount of City Facilities Fee Credits earned at that time.
- ii) Owner may assign City Facilities Fee Credits if and to the extent documented in an Assignment and Assumption Agreement as set forth in Section 13.3 of this Agreement. In the event City Facilities Fee Credits are assigned, the process outlined in this Paragraph B3b shall apply to an Assignee's application of Fee Credits in the same manner as it applies to Owner.

Prior to issuance of a building permit for a Unit, City will require either:

- i) A "Fee Credit Letter" issued by Owner in substantially the form of Attachment 3; or
- ii) Payment in cash of City Facilities Fees due for that Unit.

If Owner presents a valid Fee Credit Letter, City shall immediately apply the applicable City Facilities Fee Credits and sign the Fee Credit Letter which will reflect the amount of City Facilities Fee Credits applied at that time and the remaining City Facilities Fee Credits.

- c. Title and Condition of Land Dedicated for Onsite Sports Park Site. Any land offered for dedication to the City for the Final Sports Park Site shall, upon acceptance by the City and unless otherwise agreed to by the City prior to acceptance, (1) be free and clear from all assessments, liens, and other monetary obligations or monetary

¹⁵ For example, in exchange for providing the 17 acre Onsite Sports Park, Owner would earn fee credit in the amount of \$1,450,000 per acre for 17 acres, for a total of \$24,650,000 in fee credits. This total Fee Credit amount would convert to 900.79 Units of Fee Credit (based upon a City Facilities Fee of \$27,365 per Unit). This would result in fee credits for 900 Units and \$21,500 in cash (the residual balance) due immediately from City to Owner.

encumbrances,¹⁶ as shown by an American Land Title Association owner's policy of title insurance, (2) be in the condition required by this Agreement, and (3) subject to the City's waiver of specific conditions, be free from actionable levels of any recognized environmental condition (except for ground water contamination that may have originated off of the Property) as evidenced by a current Phase 1 Environmental Site Assessment consistent with the standards of the American Society for Testing & Materials. Any failure to deliver the Final Sports Park Site as provided by this paragraph shall be subject to the default and cure provisions of Section 12 of this Agreement.¹⁷

- d. Maintenance of City Facilities. Owner shall provide the City with a contribution towards the maintenance costs of the Community Center and Sports Park by paying, at the time of building permit issuance, a one-time up-front fee in the amount of \$760 (the "Maintenance Fee") for each Residential Unit. Owner shall have no further obligation to share in the maintenance costs of any of the Public Facilities. The Maintenance Fee may not be financed through a Financing District.
- e. Sequence of Construction. Although the City is responsible for the construction of the City Facilities, the City shall have no obligation to construct the City Facilities in any particular order or sequence, except as required by this Agreement, including the provisions of Paragraph B2i above and Section 9.3.9 of this Agreement.

4. LFTM Improvements.

- a. Payment of LFTM Fees. Owner agrees that, except as otherwise provided in this Agreement, it shall pay the LFTM Fees applicable to the Property at the time of the issuance of each building permit for the Project. Payment may be made, at Owner's option, in cash, through a Financing District as provided in Section 9.3 of this Agreement, or as otherwise permitted by the LFTM Program. City shall not add new improvements to the list of LFTM Improvements, provided that City may substitute equivalent or less expensive alternative improvements for LFTM Improvements. City shall use all LFTM Fees paid by Owner and all other OSA Landowners only to construct the LFTM Improvements, subject to City's authority to substitute less expensive alternative improvements for LFTM Improvements. The City shall use LFTM Fees paid by Owner and others to construct LFTM

¹⁶ Notwithstanding this provision, Owner shall not be required to deliver land to the City free and clear from taxes not yet due and payable.

¹⁷ In the case of a Final Sports Park Site, such a cure under Section 12 may include the substitution of another Sports Park Site acceptable to the City, including one of the Alternative Sports Park Sites and the Baker Rancho Parkway Site.

Improvements in accordance with the LFTM Ordinance. The City's failure to timely complete the LFTM Improvements shall not be either cause or an excuse for the City to refuse to issue any Subsequent Development Approval for the Project.

- b. Notice of LFTM Program to Developers and Purchasers of the Property. Owner shall include notice of the LFTM Program obligations pursuant to this Agreement in each instrument conveying any portion of the Property to a developer, merchant builder, or corporate or institutional purchaser of a portion of the Property. This provision does not apply to any purchaser or renter of a Residential Unit.
- c. Subsequent Improvements Required by CEQA. If, during subsequent environmental review of the Project or any aspect of the Project, the City determines under Subsections (a)(2) or (a)(3) of Section 15162 of the CEQA Guidelines that additional traffic mitigation not included in LFTM is required to lessen or avoid new significant impacts and the City does not adopt a statement of overriding considerations finding that the Public Benefits and other benefits of the Project offset and outweigh those new significant impacts, then the City shall fund the full cost of any such additional traffic mitigation at City's sole cost and expense.
- d. Effect of Third-Party Funding for Traffic Improvements on LFTM Fees. The City shall make a reasonable effort to obtain third-party funding for LFTM Improvements, provided that the City shall not be obligated to seek such funding to the extent that obtaining funding for LFTM Improvements would reduce the funding available to the City for non-LFTM transportation improvements. City shall reduce LFTM Fees paid by Owner for LFTM Improvements and related maintenance costs for which the City receives funding from the State of California, County of Orange, North Irvine Transportation Mitigation Program (NITM), voter-approved transportation funding programs (not including Financing Districts or other financing vehicles established to provide funds for improvements and other obligations of the OSA Landowners), the Foothill Circulation Phasing Plan ("FCPP"), or other local, state, or federal programs.
- e. LFTM Development Assumptions. Prior to August 31, 2010, Owner shall provide the development assumptions to be used for determining the Property's LFTM Fees. If actual development exceeds these assumptions, Owner shall pay additional LFTM fees only if and to the extent required by the LFTM Ordinance.

- C. **Park Dedication Requirement.** The General Plan indicates that "the City has established a parkland standard of five acres per 1,000 residents." To help achieve this standard, Section 7.38.040 of the City's Municipal Code provides

that "incident to and as a condition of the approval of a tentative map for a subdivision," five acres per one thousand "estimated population in the subdivision" shall be dedicated to the City for park facilities (the "Park Dedication Requirement").¹⁸ The City Council has found and determined that Owner will be in actual compliance with the Park Dedication Requirement through a combination of the payment of the City Facilities Fee, the provisions of this Agreement pertaining to the Sports Park Site, the provision of private open space, the dedication of parkland, the improvement of parkland, and the conveyance of parkland to one or more homeowners' associations within the Project, all as set forth in Paragraph C1 below. Included within these actions, Owner shall provide for private open space and the conveyance and improvement of parkland for "Neighborhood Parks" and similar uses at a combined rate of three Net Useable Acres per 1,000 residents, as calculated pursuant to Paragraph C1-5 below.

1. **Credit Toward Park Dedication Requirement.** The number of acres credited toward the Park Dedication Requirement for various types of parkland shall be calculated as follows:

- a. **Neighborhood Parks.** For purposes of this Agreement, "Neighborhood Parks" shall include (i) traditional neighborhood parks, as described in the General Plan (three acres or more in size), which primarily serve the specific neighborhood in which they are located (including the five-acre park described in Paragraph C2 below), (ii) mini-parks as described in the General Plan (less than three acres, although generally less than one acre), and (iii) the "Central Linear Park" and the "Borrego Linear Park," which are graphically depicted in Attachment 4. These Neighborhood Parks shall serve residents of the Project and may additionally serve other residents of the City. The City Council has found and determined that these Neighborhood Parks which are 0.5 acres or greater in size and are in substantial compliance with the criteria for either mini-parks or neighborhood parks set forth in the Recreation and Resources Element of the General Plan are eligible for credit toward the Park Dedication Requirement. Except as provided below for Linear Parks, Owner shall receive credit of 1.15 acres toward the Park Dedication Requirement for each Net Usable Acre of Neighborhood Parks improved pursuant to the standards set forth in the "Neighborhood Parks Improvement Criteria" (Attachment 5) and either (1) conveyed by Owner to the City or (2) conveyed to a homeowner's association. No Neighborhood Park areas of less than 0.5 acres will be given credit toward the Park Dedication Requirement.

¹⁸ For purposes of this Agreement, one Residential Unit shall be assumed to generate 2.91 residents.

- i) *Linear Parks.* Although Owner's improvement of (i) approximately 3.79 Net Useable Acres for the Central Linear Park and (ii) approximately 4.8 Net Useable Acres of parkland for the Borrego Linear Park would otherwise be eligible for at least 9.88 acres of credit toward the Park Dedication Requirement,¹⁹ Owner shall receive only three-and-one-half (3.5) acres of such credit for the Central Linear Park and four-and-one-half (4.5) acres of such credit for the Borrego Linear Park. Conceptual park plans and specifications for the Central Linear Park and Borrego Linear Park have been approved by the Planning Commission and City Council concurrently with the approval of this Agreement. Those plans are included as Attachment 4. Linear Parks shall be conveyed to and maintained by a homeowner's association.

If fewer than a combined total of 8.59 Net Useable Acres of parkland are dedicated for these Linear Parks, then the amount of credit toward the Park Dedication Requirement shall be reduced proportionately.²⁰

- ii) *Private Open Space.* Private open space may be less than 0.5 acres. Owner shall receive 0.25 acres of credit toward the Park Dedication Requirement for each acre of private open space which meets the standards of Section 7.38.050 of the City's Municipal Code. However, if private open space is utilized in a shared use program with a public park, parking requirements for the public park shall not be met by parking provided to meet the development standards for the private development which includes the private open space. Similarly, parking requirements for the private development which includes the private open space shall not be met by parking provided to meet the development standards for the public park

- 2. **Location and Conveyance of Neighborhood Parks.** The location of all Neighborhood Parks shall be identified on the First Tentative Map. Owner's dedication of Neighborhood Parks shall include one five (5) acre Neighborhood Park (the "Five-Acre Neighborhood Park"), with improvements consisting of one sports field with a soccer overlay, restrooms, and parking. The offer of dedication shall contain a permanent restriction against the installation of sports field lighting within the Five-Acre Neighborhood Park. Delivery of the Five-Acre Neighborhood Park site, with improvements, shall occur prior to the earlier of (a) the issuance

¹⁹ Owner and City concur that the approximately 8.59 acres which will be dedicated would, when improved, generate a credit of 9.88 acres.

²⁰ The number of acres credited will be reduced proportionately so that Owner is credited for 81% of the full Neighborhood Park Credit (1.15:1 acres).

of the 901st building permit for the Project and (b) the recordation of a B Map which includes area Planning Area 1A as shown on the Land Use Plan of the PC Text.

With respect to all other Neighborhood Parks which are three (3) acres or larger in size, Owner shall have the election to either offer those Neighborhood Parks for dedication to the City or convey title to those Neighborhood Parks to a homeowners' association. The City shall accept any Neighborhood Parks offered for dedication within thirty (30) days of delivery of the Neighborhood Park improved in accordance with the "Neighborhood Parks Improvement Criteria" contained in Attachment 5 or as otherwise specified in this Agreement.²¹

"Mini parks" (i.e., Neighborhood Parks smaller than three (3) acres) shall be conveyed to a homeowners' association.

3. **Location of Private Open Space.** The location of private open space shall be identified on the Area Plan or, in the case of multi-family housing, in the applicable Site Development Plan.
4. **Maintenance of Neighborhood Parks.** After accepting an improved Neighborhood Park delivered as set forth in Paragraph C2 above, the City shall be solely responsible for maintenance of those Neighborhood Parks at its own cost.
5. **Title and Condition of Land Dedicated for Neighborhood Parks.** Any land offered for dedication to the City for Neighborhood Parks shall, unless otherwise agreed to by the City prior to acceptance, be delivered (1) free and clear from all assessments, liens, and other monetary obligations or monetary encumbrances,²² as shown by an American Land Title Association owner's policy of title insurance, (2) in the condition required by this Agreement, and (3) subject to the City's waiver of specific conditions, free from actionable levels of any recognized environmental condition (except for ground water contamination that may have originated off of the Property) as evidenced by a current Phase 1 Environmental Site Assessment consistent with the standards of the American Society for Testing & Materials.

- D. **School Facilities.** As a pre-condition to entering into this Agreement, City has required Owner to enter into an agreement with the Saddleback Valley Unified School District ("SVUSD") to mitigate potential impacts of the Project upon

²¹ Owner may, if it so chooses, use its own consultants to design the Neighborhood Parks. All Neighborhood Parks shall be planned and reviewed under the City's park planning process, but shall not require more than the minimum level of improvement set forth in the Neighborhood Parks Improvement Criteria.

²² Notwithstanding this provision, Owner shall not be required to deliver land to the City free and clear from taxes not yet due and payable.

School Facilities on terms that are satisfactory to the City. Owner and SVUSD have entered into such an agreement which is, in fact, acceptable to the City. A copy of that agreement is attached as Attachment 6.

- E. **Alton Parkway.** The "Alton Segment" is that portion of the future alignment of Alton Parkway which is located on the Property between Commercentre Drive and the existing (as of the Approval Date) terminus of Alton Parkway at Towne Centre Drive. The Alton Segment is graphically depicted in Attachment 7 to Exhibit F. The Alton Segment will consist of a six-lane major arterial fully developed, including improvements, as shown in the cross-section in Attachment 7.

1. **Early Construction of "City Alton".** The City desires to construct a portion of the Alton Segment ("City Alton") earlier than the complete Alton Segment would be constructed in the ordinary course of Owner's discretionary schedule for the Development ("the Ordinary Course of Owner's Development"). The City Alton improvements are described and graphically depicted in Attachment 8 and shall include, among other features described in Attachment 8, grading of the City Alton road prism to the ultimate full width of the Alton Segment, a four lane alignment, a permanent median from Commercentre Drive to Town Centre, and left turn pockets to accommodate future development of the Project. City Alton also includes grading and the installation of utilities and other infrastructure improvements as shown on Attachment 8.
2. **The Alton Construction Process.** The process by which City Alton and the remaining portions of the Alton Segment (the "Alton Remainder") will be constructed shall be referred to as the "Alton Construction Process." The Alton Construction Process consists, first, of the construction of City Alton by the City and, second, of the phased completion of the Alton Remainder by Owner in the Ordinary Course of Owner's Development. Owner and the City have agreed to facilitate the Alton Construction Process on the terms provided below.
 - a. **Construction Responsibilities.** The City shall complete construction of City Alton in accordance with the schedule set forth in Table A below through its own funding sources and at no expense to Owner²³, except as otherwise provided in this Agreement. Subsequently, Owner shall complete construction of the Alton Remainder at Owner's own expense, except as otherwise provided in this Agreement. At any time during the Alton Construction Process, Owner may elect to assume control of and responsibility for completion of the full Alton

²³ Among its possible funding sources, City intends to seek FCPP funds to pay for some or all of the construction costs.

Segment if the City either (1) repudiates its obligation to construct City Alton or (2) fails to meet its deadlines under Table A.

- b. Additional Costs Resulting from City Alton. The Parties agree that Owner's Development and completion of the Alton Remainder after the City constructs City Alton will be more expensive than waiting for the entire Alton Segment to be constructed in the Ordinary Course of Owner's Development. Therefore, the Parties have agreed that the City will bear responsibility for the estimated increase in costs (the "Acceleration Cost") that Owner will incur as the result of the construction of City Alton in advance of the Ordinary Course of Owner's Development.
- c. Agreed Acceleration Cost. After extensive discussion, investigation, and negotiation, the Parties have elected not to further attempt to precisely calculate the Acceleration Cost after construction of the Alton Segment is complete. Instead, to maximize cost certainty for each of the Parties, they have agreed upon a fixed Acceleration Cost which reflects their joint good faith calculation of the Acceleration Cost as of the Approval Date (the "Agreed Acceleration Cost"). The Agreed Acceleration Cost has been established as \$810,000 but is subject to adjustments as provided below. The Agreed Acceleration Cost represents the Parties' best estimate of the actual costs of:
 - i) Retrofitting the City Alton improvements to facilitate completion of the full Alton Segment;
 - ii) Closing completed portions of the Alton Segment to accommodate Owner's grading activities for Owner's Development and the Alton Remainder (subject to Paragraph E2e below);
 - iii) Interruption of Owner's grading operations and the resulting need for otherwise unnecessary road crossings, whether at or above grade; and
 - iv) A portion of the construction costs for the Alton Storm Drain (see Paragraph E2i below).
- d. Acceleration Cost Offset. To offset the impact of the Acceleration Cost to Owner,²⁴ City has agreed to do the following:

²⁴ The \$810,000 offset of the Acceleration Cost described in this Paragraph E2d does not include additional credits for bridge crossings described in Paragraph E2g below or credit for the Acceleration Retrofit Costs described in Paragraph E2h below.

- i) Grade and construct City Alton consistent with the provisions of this Agreement, including the depiction and specifications contained in Attachment 8;
 - ii) Grade and improve the detention basin consistent with the depiction and description set forth in Attachment 9²⁵ and Owner's approved Alton Storm Drain Plans;
 - iii) Waive any right to compensation for City's construction (the "Commercentre Construction") of Commercentre Drive between its current terminus and the future location of Alton Parkway, as well as the Alton Parkway/Commercentre Drive intersection (together, the "Commercentre ROW"), whether pursuant to prior agreements and understandings of the Parties²⁶ or otherwise; and
 - iv) Construct the Alton Storm Drain pursuant to the provisions of Paragraph E2i below. If, for any reason, City does not build the Alton Storm Drain, then a \$65,000 credit shall be applied toward, at Owner's election, Owner's City Facilities Fee obligations, LFTM Fees, or any combination of those fees elected by Owner.
- e. Road Closures. Subject to Paragraph E2f below, City shall close any completed portion or portions of the Alton Segment when and as requested by Owner to accommodate Owner's grading and construction activities related to Owner's Development and the Alton Remainder. Owner is entitled to, and City shall provide, such road closures subject to Owner delivering to City a "Road Closure Plan" specifying the times, locations, and grading requirements of the required road closures. The Road Closure Plan shall be subject to the following:
- i) The City shall not be required to provide more than three road closures²⁷ which, in the aggregate, continue for more than seventy (70) days;
 - ii) Each road closure requires thirty (30) days' advance notice from Owner to City;
 - iii) No single road closure may exceed forty-nine (49) days;

²⁵ The detention basin will be sized to serve the ultimate Project.

²⁶ Owner previously has made a good faith offer of dedication to the City (the "Commercentre IOD") of a portion of land needed to complete the Commercentre Construction. The Commercentre IOD was accepted and recorded by the City on April 10, 2009. Additionally, on April 10, 2009, City and Owner entered into a license agreement to facilitate the Commercentre Construction (the "Commercentre License").

²⁷ A single "road closure" shall refer to the simultaneous closure of all roads within the Property necessary to accommodate Owner's identified grading activity. For example, the simultaneous closure of more than one road or of one road at different locations will be considered a single road closure.

- iv) Within each road closure, Owner may utilize as many crossing points as are required in Owner's judgment to most efficiently accommodate Owner's grading and construction activities;
 - v) A minimum of twenty-one (21) days shall occur between road closures; and
 - vi) All road closures may be extended for events beyond the parties' control as set forth in Section 14.10 of this Agreement.
- f. City Election of Temporary Bridges. Within forty-five (45) days after Owner delivers a Road Closure Plan to the City, the City may instead elect to grant permission to Owner to construct either one or two (to be determined solely by Owner) temporary bridges in order to enhance local traffic circulation during Owner's grading and construction activities (the "Bridge Option"). The bridges will be constructed to allow heavy earth moving equipment (e.g. earth movers and scrapers) at full capacity to cross over the Alton IOD Area (see Attachment 10) at locations to be determined by Owner in order to accomplish Owner's work at the lowest feasible cost as determined in Owner's reasonable judgment. Written notice of the City's election of the Bridge Option must be delivered to Owner within forty-five (45) days after Owner's submittal for plan check of a grading plan for the Alton Segment and/or areas of Owner's Development adjacent to any portion of the Alton Segment. If City does not timely provide notice of its election of the Bridge Option, City must provide the road closures described in Paragraph E2e above for the timeframes requested by Owner pursuant to Paragraph E2e.
- g. Additional Credits for Bridge Crossings. If City elects the Bridge Option, Owner shall receive a credit toward, at Owner's election, either Owner's City Facilities Fees, LFTM Fees, or FCPP Fees, or any combination of those fees, in the amount of \$690,000. This credit shall be in addition to any other fee credit due Owner under this Agreement and shall not be reduced by the Acceleration Cost offset described in Paragraph E2d above.²⁸
- h. Additional Reimbursement from FCPP Program. In addition to (i) the offset of the Acceleration Costs described in Paragraph E2d above, (ii) any credits resulting from City's election of the Bridge Option, and (iii) any other credit provided by this Agreement, Owner shall be immediately entitled to reimbursement for any cost which is incurred by Owner during the construction of the Alton Remainder and is listed on Attachment 11 ("Acceleration Retrofit Costs"). The maximum credit

²⁸ Owner shall be entitled to apply the selected fee credit in its entirety at any time after Owner begins construction of the first temporary bridge crossing.

which Owner may receive under this Paragraph E2h is \$110,000. If reimbursement funds are then or later available from the FCPP program after the City has first been reimbursed for its costs of construction for City Alton, those FCPP funds, to the extent available, shall be the first source of reimbursement. If however, those FCPP funds are not available or only available to partially reimburse Owner for the Acceleration Retrofit Costs, then Owner shall receive the remainder of the required reimbursement through an additional City Facilities Fee Credit.

- i. Alton Storm Drain. As part of its construction of City Alton, City shall construct²⁹ a permanent storm drain system adjacent to or within the general alignment of the Alton Segment (the "Alton Storm Drain") and Owner shall pay the cost of construction of the Alton Storm Drain, subject to the following:
 - i) *Design Schedule for Alton Storm Drain.* The design of the Alton Storm Drain will be prepared by Owner and delivered to the City no later than the "Project Target Date" for Task 2 of Table A below. City shall construct the Alton Storm Drain according to Owner's design.
 - ii) *Construction Schedule for Alton Storm Drain.* The City shall complete construction of the Alton Storm Drain with ordinary and customary coordination with the City Alton roadway improvements no later than the "Project Target Date" for Task 5 of Table A.
 - iii) *Security for Alton Storm Drain Improvements.* Provided that the City gives Owner thirty (30) days written notice of the date on which it intends to formally solicit bids for the construction of City Alton and the Alton Storm Drain (the "Bid Date"), Owner shall provide, no later than fifteen (15) days prior to the Bid Date, security for the cost of construction of the Alton Storm Drain in the amount of the engineer's cost estimate, less \$235,000.³⁰ Security may be, at Owner's election, in the form of either (a) cash in an escrow account to be drawn upon by City upon the completion of mutually agreed milestones specified in the escrow documents or (b) a letter of credit. If the accepted bid is less than the pre-bid engineer's estimate, then Owner's security shall be reduced by the amount of the difference;

²⁹ If Owner exercises its right to complete construction of the entire Alton Segment as set forth in Paragraph E2m(i) (1) below, then Owner also shall have the right to complete the Alton Storm Drain improvements.

³⁰ This \$235,000 represents a portion of the Agreed Acceleration Cost. It is not a "cap" on the engineer's cost estimate, but rather is a dollar amount to be deducted from the engineer's estimate. For example, if the engineer's estimate is \$1,235,000, then Owner shall provide security in the amount of \$1,000,000.

- iv) *Credit Toward Cost of Alton Storm Drain.* Provided that Owner has timely complied with the design and security provisions set forth in Paragraphs E2i(i) and E2i(iii) above, then, in addition to any other credit due Owner under this Agreement, Owner shall receive a credit of \$170,000 in addition to the \$65,000 included in the Agreed Acceleration Cost (see Paragraph E2c(iv) above) toward its obligation to the cost of construction of the Alton Storm Drain. This additional \$170,000 credit reflects savings to the City arising from the City's early completion of the Alton Storm Drain. This credit shall be given no later than ten (10) days after the date on which the City completes Task 3 of Table A below; and
- v) *Progress Payments.* Owner shall make progress payments, with a corresponding reduction in the provided security, to the City during construction of the Alton Storm Drain. City shall provide Owner with invoices reflecting standard contract billings for work completed no more than once a month. All contractor invoices for work shall be first reviewed by the City and then approved and certified as correctly reflecting the actual work performed. Owner's progress payment shall be due within thirty (30) days of Owner's receipt of the approved and certified invoice from the City.
- j. Dedication of Rights-of-Way. Within five (5) days after the Effective Date, Owner shall provide to the City an irrevocable offer to dedicate the right-of-way required for the construction of the Alton Segment (the "Alton IOD," as generally depicted in Attachment 10³¹). The Alton IOD shall reserve Owner's right to re-enter the dedicated property to, in the Ordinary Course of Owner's Development, both (1) complete construction of the Alton Segment and (2) complete development of the Project, including the installation of utilities and other improvements. The City may accept the Alton IOD at any time after it is made, but no later than five days before the date on which the City intends to enter the Property to begin the construction of City Alton, unless the City enters the Property pursuant to the License Agreement described in Paragraph E2k. If the City has already entered the Property pursuant to the "Alton License" at the time that Owner provides the Alton IOD, then City shall accept the Alton IOD no later than 5 days after it is provided.
- k. License for Early Entry onto Alton Segment. If the Effective Date is after September 1, 2010, Owner shall provide to City a license (the

³¹ Modifications to the alignment of the Alton Segment right-of-way shall not be considered amendments to this Agreement provided that they have been approved in writing by the Parties following approval by the City Council.

"Alton License")³² for entry onto the Alton Segment and the Alton License Areas (as those areas are defined in Paragraph E2I below) for the purpose of constructing City Alton. City will indemnify Owner for any damage to Owner resulting from City's entry onto the Alton Segment. In the event of a third party challenge to City's discretionary approvals related to this Agreement, City shall immediately cease all work on City Alton and the Parties shall confer on how and when City may resume work on City Alton.

- I. Alton License Areas. On or before the Effective Date, the City and Owner shall cooperate to preliminarily identify those portions of the Property outside the boundaries of the Alton IOD which the City will require for staging, grading, borrow areas, environmental mitigation, and other activities necessary to the construction of City Alton and the Alton Storm Drain (the "Alton Staging Areas"). Final Alton Staging Areas will be determined at the conclusion of Alton Task 2 of the "City Alton Timetable" set forth in Table A below. Within thirty (30) days after the conclusion of Alton Task 2, Owner shall provide either, at Owner's option, a license or entry permit to the City to allow the City access to the Alton Staging Areas sufficient to perform its City Alton and Alton Storm Drain obligations under this Agreement. City will indemnify Owner for any damage to Owner resulting from City's entry onto the Alton Staging Areas.
- m. Design of the Alton Segment (the "Alton Design Process"). The Alton Design Process is that portion of the Alton Construction Process which consists of the complete planning and design processes for both City Alton and the Alton Remainder. The City shall be responsible, at City's own expense, for completing the design of City Alton. City shall utilize consultants and professionals³³ selected by City after consulting with Owner, and Owner shall be responsible, at Owner's own expense, for completing the design of the Alton Remainder, utilizing consultants and professionals selected by Owner after consulting with City.
 - i) *Alton Segment Design and Construction Schedule*.
 - (1) *City Alton*. Target dates for the design and construction process for City Alton ("Project Target Dates") are set forth within Table A below.³⁴ Should the City fail to timely meet any

³² The Alton License shall be in substantially the same form as the Commercentre License.

³³ The "consultants and professionals" requiring Owner's approval include all consultants and professionals working under the City's construction contracts for the Alton Segment, such as, but not limited to, engineers, soil consultants, and grading and paving contractors.

³⁴ The timeframes set forth in Table A may be modified by written agreement of the Parties. Such modifications shall not be considered amendments to this Agreement. The timeframes set forth in Table A may be extended by up to (footnote continued)

of the Project Target Dates and remain delinquent in meeting that Target Date for two (2) months or longer,³⁵ Owner shall have the option to assume control of and responsibility for completion of both the Alton Design Process and the construction of the entire Alton Segment. Owner may exercise this option by giving City written notice at any time that City has not yet completed a "Task" set forth in Table A after the passage of the corresponding Project Target Date. If Owner exercises this option, the early construction of City Alton shall not be required and completion of both the Alton Design Process and the Alton Segment shall occur both in the Ordinary Course of Owner's Development and in accordance with any approved Public Facilities Phasing and Financing Plan for the Project. Unless and until Owner exercises this option, the City shall continue to expeditiously complete the Alton Design Process and the construction of City Alton.

- (2) *Alton Remainder.* Owner may prepare the design of the Alton Remainder in the Ordinary Course of Owner's Development, provided that it also is prepared in accordance with any approved Public Facilities Phasing and Financing Plan for the Project.

six (6) months in the case of a bona fide dispute between the City and a City Alton contractor, provided that the total of such extensions may not exceed one year.

³⁵ As with the performance by either of the Parties of any of its obligations under this Agreement, delays related to the City's performance under this Paragraph are subject to the provisions of Section 14.10 of this Agreement.

Table A			
City Alton Timetable			
Task		Responsibility	Project Target Dates (1)
1	City's Design Process Achieves 35% Construction Documents	City	June 30, 2010
2	City's Design Process Achieves 65% Construction Documents	City	September 30, 2010
3	City's Design Process Achieves 100% Complete, Approved, and Biddable Construction Documents	City	December 31, 2010
4	Construction of City Alton Begins	City	No Later than November 1, 2011
5	City Accepts City Alton Improvements as Complete	City	December 31, 2012
(1) The failure of City to meet any Milestone in Table A above shall be neither a Minor Default nor a Major Default.			

ii) *Collaboration on Design.* The Parties shall collaborate on the following aspects of the Alton Design Process:

- (1) *Alton Parkway Alignment.* Owner has provided to the City and the City shall incorporate horizontal and vertical alignments of the Alton Segment in the design of City Alton. These alignments are depicted in Attachment 12. The City, through its engineering consultants, may propose minor changes in these alignments which, if Owner finds to be in substantial conformance with the alignments depicted in Attachment 12, will be incorporated into the design of the Alton Segment. Owner's finding of substantial conformance shall not be unreasonably withheld.
- (2) *Centerline Intersections.* Owner has provided to the City and City shall incorporate in the design of City Alton centerline intersections for Rancho Parkway, the North Loop road, and the South Loop road, including the location of left turn pockets within the Alton median. These centerline intersections are depicted in Attachment 12. The City, through its engineering consultants, may propose minor changes in these centerline intersections which, if Owner finds are in substantial conformance with the centerline intersections depicted in Attachment 12, will be incorporated into the design of the

Alton Segment. Owner's finding of substantial conformance shall not be unreasonably withheld.

- (3) *Integrity of Road Prism.* All design related to construction of City Alton shall fully respect all of Owner's engineering recommendations as set forth on Attachments 8 and Attachment 12. Grading and improvement work for City Alton must be consistent with Owner's design concepts for the Project as a whole and may not occur in a manner which could require re-grading of or encroachment into the completed Alton Segment right-of-way in order for Owner to complete the Project as designed.
 - (4) *Interim Drainage.* As part of the construction of City Alton, City will design, in coordination with Owner, and install an interim drainage system. This interim drainage system shall comply with all applicable regulatory requirements and control all drainage to, from, and across City Alton and the Property which results from the construction and/or operation of City Alton. This interim drainage system shall be designed to accommodate conditions both including and excluding the Alton Storm Drain and to minimize transition and Acceleration Retrofit Costs upon completion of the Alton Remainder.
 - (5) *Other Engineering Design and Recommendations.* City shall provide Owner with reasonable opportunity to review and comment on all bid documents, construction drawings, and engineering design and recommendations. The City will consider such minor changes in good faith.
 - (6) *Release of City Alton Plans.* So that Owner can properly coordinate design of the Alton Remainder, City will provide at Owner's request both electronic and hard copies of all construction plans and drawings for City Alton, including all "as built" revisions.
- iii) *City Work Adjacent to City Alton.* All City work adjacent to City Alton shall be completed to the same residential standards applicable to the Project and to standards sufficient to fully accommodate the Project as designed.³⁶
- n. Construction Schedule for City Alton. The City shall start construction of City Alton no later than November 1, 2011, continue construction

³⁶ For example, a buttress for a slope must meet a standard sufficient to support future residential construction on the supported pad.

without interruption, and complete construction³⁷ in a workmanlike manner by the earlier of (1) twelve (12) months after the start of construction and (2) December 1, 2012. City shall provide Owner, at Owner's expense, reasonable access to the City Alton construction site and activities to assess ongoing compliance with construction drawings, engineering design, and the requirements of this Agreement. The purpose of this access and assessment is to cooperate in good faith with the City to avoid construction errors which could increase the cost to one or both of the Parties related to the completion of the entire Alton Segment and the Project.

- o. Construction Schedule for Remaining Portions of Alton Segment. Whether after the City completes the construction of City Alton or after Owner assumes responsibility for the completion of the Alton Segment because of the City's failure to meet the milestones set forth in Table A, Owner shall construct the remaining portions of the Alton Segment, including the Alton Remainder, in the Ordinary Course of Owner's Development, subject to Owner's compliance with the following phasing program:
 - i) *"Alton Phase 1."* Alton Phase 1 consists of the construction of that portion of the Alton Segment running from Commercentre Drive to South Loop Road, a graphical depiction of which is included in Attachment 13. Owner shall have the vested right to build 300 Residential Units before construction of Alton Phase 1 is required to be complete.
 - ii) *"Alton Phase 2."* Alton Phase 2 consists of the construction of that portion of the Alton Segment running from the South Loop Road to Towne Centre Drive, a graphical depiction of which is included in Attachment 13. Owner shall have the vested right to build 900 Residential Units before construction of Alton Phase 2 is required to be complete.
- p. Coordination of City Alton and the Alton Remainder.
 - i) *Pavement Sections.* City shall construct City Alton with an aggregate base pavement section which will be two (2) inches thicker than the standard design section of the Alton Segment, allowing for the completion of the cap pavement by Owner during construction of the Alton Remainder.

³⁷ Construction shall be deemed complete when all work is finished in compliance with the depictions and descriptions contained in Attachment 8 and City has complied with all of its other obligations set forth within this Agreement which pertain to the construction of City Alton.

- (1) *Differential Thickness*. The Parties acknowledge that the ultimate paving section thickness for City Alton and the Alton Remainder may be different both in composition (aggregate base and asphalt thickness) and overall depth.
 - (2) *Cap Tolerance*. It is critical that the base pavement for City Alton is installed accurately so that Owner does not incur additional costs related to grinding and/or excessive asphalt procurement and placement during Owner's completion of the Alton Segment. Prior to cap paving of City Alton by Owner, Owner will cause its surveyor to perform a topographic survey with elevation shots at fifty (50) foot intervals at median curb, center of pavement, and edge of pavement on each side of the median to ensure the ultimate surface elevations are within a tolerance of no greater than two-and-one-quarter (2.25) inches and no less than one-and-one-half (1.5) inches below future cap pavement final grade elevations. The survey shall be plotted, certified by the surveyor, and presented to City for acceptance. Any areas demonstrated by the survey to be outside the tolerance range shall be ground, filled, or otherwise corrected by Owner at City's sole cost to bring those areas within the tolerance range stated above.³⁸
- q. Responsibility for Repairs. Based on the construction schedules set forth in Paragraphs E2m and E2n and Table A, City Alton is expected to be completed and in service for an extended period of time prior to completion of the Alton Remainder. Prior to Owner's commencement of construction operations adjacent to City Alton, Owner and City will cooperate to identify (1) any then-existing damage to City Alton, (2) which portions of that damage which will be repaired by City prior to Owner's commencement of its adjacent construction operations, and (3) which portions of that damage may be repaired by City (or Owner at City's expense) after Owner's commencement of its adjacent construction operations.
- r. Maintenance of Alton Segment. The City shall have sole responsibility for the maintenance of all or any completed portions of the Alton Segment, (i.e., both City Alton and the Alton Remainder).
- s. Mitigation for Construction of City Alton. The City shall be responsible for completion of all onsite and offsite mitigation required by any public agency with respect to the impacts of the construction of City Alton, with the exception of the Borrego Condition, which shall be addressed as provided in Paragraph E2u.

³⁸ All costs related to the cap paving of City Alton are eligible for FCPP reimbursement.

- t. FCPP Reimbursement. To the full extent permitted by the FCPP as of July 1, 2009, as well as the Fee Sharing Agreement and the "Agreement for the Funding, Through FCPP, of Design Services for the Extension of Alton Parkway From Commercentre Drive to Towne Centre Drive Within the City of Lake Forest", approved as County Agreement No. D10-006, the City shall be entitled to seek reimbursement from the FCPP for the City's costs incurred in the construction of City Alton and Owner shall be entitled to seek reimbursement from the FCPP for Owner's costs incurred in the construction of the Alton Segment, including the Alton Remainder.³⁹ Notwithstanding any other provision of this Agreement, the City shall not seek reimbursement from the FCPP for any other road or other improvements until the Alton Segment is complete and the City and Owner have been fully reimbursed to the full extent of available FCPP funds.
- u. Matters Related to the Borrego Condition.
- i) *Borrego Improvements.* The timing of Owner's completion of the Borrego Improvements⁴⁰ is subject to and dependent on whether the Borrego Condition is imposed. If the Borrego Condition is imposed, Owner shall complete the Borrego Improvements to the extent required by the Borrego Condition. If the Borrego Condition is not imposed, Owner may complete the Borrego Improvements in the Ordinary Course of Owner's Development and in compliance with permits issued and/or approvals granted by (i) those Resource Agencies having jurisdiction over the Borrego Improvements and/or (ii) the Orange County Flood Control District.
- ii) *Conditionally Vested Market Rate Apartments / Borrego Condition.* If the Borrego Condition is imposed and, within fifteen days after the Borrego Condition is imposed, the City has not provided Owner with written notice that the City will *not* construct City Alton, then Owner shall have the irrevocable⁴¹ vested right (but not the obligation) to build no less than 425 Market Rate Apartments within PA 1A North *in advance of* approval of the Area Plan and First Tentative Map, or at any time thereafter (the "Conditionally Vested Market Rate Apartments").⁴² The

³⁹ Should Owner assume responsibility for the construction of all or any portion of City Alton, Owner shall be entitled to seek reimbursement from the FCPP for Owner's costs incurred in the construction of City Alton.

⁴⁰ The Borrego Improvements Area is depicted on Attachment 14.

⁴¹ This right shall be vested irrespective of any later decision by the City not to proceed with City Alton construction.

⁴² PA 1A North is a portion of a larger site designated for mixed use development. Whether or not the Conditionally Vested Market Rate Apartments are built, nothing contained within this Agreement is intended to limit Owner's right to (footnote continued)

Conditionally Vested Market Rate Apartments shall be considered within the range of total Residential Units which Owner may build pursuant to Section 8.1.2 of this Agreement. The Conditionally Vested Market Rate Apartments shall be a maximum three-story walk up design consistent with those design standards and City code requirements contained in the Existing Land Use Regulations. The City has agreed to permit Owner to build the Conditionally Vested Market Rate Apartments on the terms outlined below in consideration of Owner's agreement to fund or cause to be funded construction of the Borrego Improvements earlier than planned as a result of the construction of City Alton, even if City Alton construction is not completed. Owner's application for entitlement to construct the Conditionally Vested Market Rate Apartments shall be limited to a parcel map and a site development permit. Absent Owner's approval, under no circumstances shall the Conditionally Vested Market Rate Apartments be considered as part of the First Tentative Map Submittal Package. Building or other permits for the Conditionally Vested Market Rate Apartments shall not be considered permits which "trigger" any obligation on Owner's part under this Agreement.

- iii) *Timing.* If the Borrego Condition is imposed, Owner will need time to (1) complete and obtain any necessary regulatory approvals for any improvement plans required to comply with the Borrego Condition and (2) prepare, submit, and receive approval for plans for the Conditionally Vested Market Rate Apartments. Because Owner's costs incurred to comply with the Borrego Condition are to be funded through the development of the Conditionally Vested Market Rate Apartments, City shall expedite all applications for approvals and plans for the Conditionally Vested Market Rate Apartments. City and Owner will cooperate in good faith to expedite all actions necessary for Owner to comply with the Borrego Condition and acknowledge such compliance may cause delays in the planned schedule for City Alton.
- iv) *Condominium Conversion Fee.* Owner shall pay a fee of twelve thousand dollars (\$12,000) per Residential Unit for any Conditionally Vested Market Rate Apartment Residential Unit which is subsequently sold as a condominium. Payment shall be made at the time that the sale of a condominium is recorded. With respect to any Residential Units where no fee has been paid at

request uses for that larger mixed use site which are consistent with the general plan, all applicable zoning, and the PC Text Amendment.

the time this Agreement terminates, Owner shall be subject to any lawful condominium conversion fee provided in the City code with respect to conversions after termination of this Agreement. In the event any Conditionally Vested Market Rate Apartment is not mapped as a condominium, any future conversion of that Residential Unit must follow the City's then-applicable lawful condominium conversion procedure.

- v) *Four Acre Dedication to City.* Subject to and concurrently with final approval by the City of Owner's application for a site development permit for the Conditionally Vested Market Rate Apartments (the "Site Permit"), Owner will make an irrevocable offer of dedication to the City of four (4) Net Useable Acres of land (the "Four Acre IOD") to serve as the Affordable Site referenced in Section 8.23 of this Agreement (the "Four Acre Affordable Site"). The Four Acre Affordable Site will be selected by Owner from within the approximately ten (10) acres of Property shown on Exhibit C-1 and will be used by the City solely for the development of Affordable Units. The Four Acre IOD shall contain provisions which will cause the City's interest in the Four Acre Affordable Site to terminate and for title to that property to revert to Owner, at no cost to Owner, if, after the Four Acre IOD is accepted and recorded, the City does not approve and issue all requested building permits for the Conditionally Vested Market Rate Apartments. As set forth in Section 8.23 of this Agreement, the Four Acre IOD will fully satisfy all of Owner's affordable housing obligations with respect to development of up to 2,100 Residential Units within the Project⁴³ and will eliminate all obligations under the Affordable Housing Implementation Plan attached to this Agreement as Exhibit G.
- vi) *City Facilities Fee Credit.* In exchange for the Four Acre IOD, Owner shall receive City Facilities Fee credit of \$27,365 for each Conditionally Vested Market Rate Apartment in excess of 315 Residential Units, with a maximum credit of \$3,010,150.⁴⁴
- vii) *Acceptance and Delivery.* On or before the issuance of the first building permit for the Conditionally Vested Market Rate Apartments, Owner must deliver the Four Acre Affordable Site to the City (i) free and clear from all assessments, liens, and other

⁴³ If more than 2,100 residential units are approved with the First Tentative Map (excluding the Conditionally Vested Market Rate Apartments or, if developed by the City, the Affordable Units), then, as set forth in Section 8.23 of this Agreement, in addition to making the Four Acre IOD, Owner shall pay an in lieu fee of \$12,000 per residential building permit issued in excess of 2,100.

⁴⁴ If the City Facilities Fee increases pursuant to Paragraph B3a above, the maximum credit shall be increased proportionately.

monetary obligations or monetary encumbrances, as shown by an American Land Title Association Owner's policy of title insurance, with no requirement to participate in the formation of future Financing Districts and (ii) in Superpad Condition with access provided from Rancho Parkway. The Four Acre IOD may not be accepted by the City until after the issuance of the first building permit for the Conditionally Vested Market Rate Apartments.

viii) *Adjustments to Fees and Credits.* All fee and credit obligations of Owner and City required by this Paragraph E2u, including, but not limited to, the City Facilities Fee Credit applicable to the Four Acre IOD (see Paragraph E2u(vi)), the condominium conversion fee (see Paragraph E2u(iv)), and the affordable housing in-lieu fee (see Footnote 43 to Paragraph E2u(v) and Section 8.23 of this Agreement), shall be adjusted to reflect changes in the ENR Index between July 1, 2010, and the most recent July 1 occurring before the date in question.

- v. City Work Under Owner's 401 Certification. To the extent permitted by law, Owner consents to the City's construction of City Alton in accordance with the authorization of the Section 401 Water Quality Standards Certification for the Project (the "401 Certification"). The Parties expect the 401 Certification to be issued by the Santa Ana Regional Water Quality Control Board in connection with the United States Army Corps of Engineers' Section 404 permit issued for the construction of the Project.

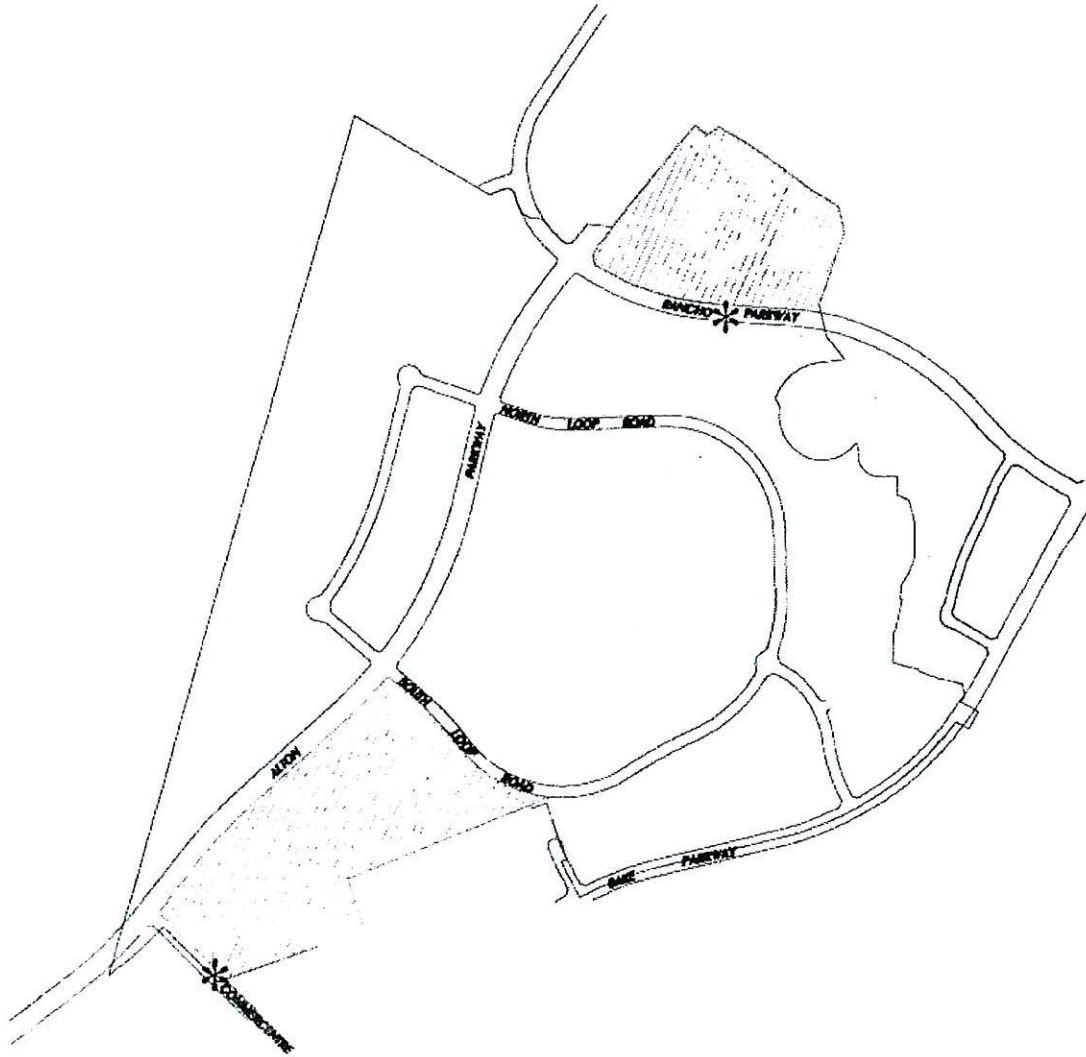
City agrees that, in constructing City Alton, City will fully comply with all relevant and applicable provisions of the 401 Certification, any other Resource Agency Permit, or any City or County permit or approval which allows or is required for the construction of City Alton (collectively, an "Applicable Permit"). With the exception of the Borrego Condition, which shall be addressed as provided in Paragraph E2u, this compliance obligation includes, but is not limited to, completion of all onsite and offsite mitigation required by any Applicable Permit with respect to the impacts of the construction of City Alton.⁴⁵ Except as so provided, the City shall have no further obligation to mitigate impacts caused by the construction of City Alton, unless the Santa Ana Regional Water Quality Control Board imposes additional conditions in connection with a City-initiated amendment of the 401 Certification or a separate City permit application for construction of City Alton.

⁴⁵ An example of such mitigation would be the mitigation of impacts to the "un-named tributaries" that the 401 Certification anticipates will be caused by construction of City Alton.

If the Santa Ana Regional Water Quality Control Board determines that the City may not operate under the 401 Certification or imposes the Borrego Condition as a condition of City Alton alone, Owner agrees to cooperate with City at no cost to Owner if City either seeks to amend the 401 Certification or, for any reason, files a separate permit application for the construction of City Alton. Satisfaction of conditions related to the City's construction of City Alton, with the exception of the Borrego Condition, which shall be addressed as provided in Paragraph E2u, including any additional conditions imposed by the Santa Ana Regional Water Quality Control Board in connection with such an amendment or separate application, will be the sole responsibility of the City.

ATTACHMENT 1a TO EXHIBIT B
Alternative Onsite Sports Park Sites

Attachment 1a
ALTERNATIVE ONSITE SPORTS PARK SITES



Scale: 1"=1,000'

LEGEND



PROVISION OF ACCESS AS GENERALLY
SHOWN OFF OF RANCHO PARKWAY AND
COMMERCENTRE



ONSITE SPORTS PARK SITE WILL BE
LOCATED ON ONE OF THE TWO IDENTIFIED
AREAS

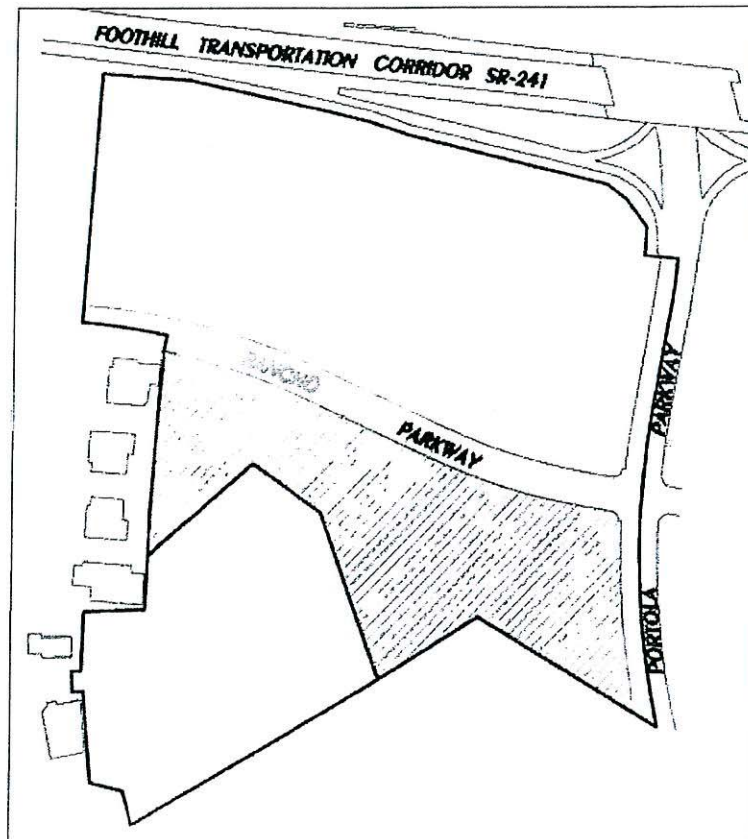
NOTE: ALL STREET CONFIGURATIONS ARE CONCEPTUAL

DATE: 05-20-2010

ATTACHMENT 1b TO EXHIBIT B

Baker Rancho Parkway Site

Attachment 1b
BAKER RANCHO PARKWAY SITE



Scale: 1"=500'

BAKER RANCHO PARKWAY SITE

NOTE: ALL STREET CONFIGURATIONS ARE CONCEPTUAL

ATTACHMENT 2 TO EXHIBIT B
City Facilities Fee Credit Statement

**ATTACHMENT 2
CITY FACILITIES FEE CREDIT STATEMENT**

Date: _____

Owner: _____ ("Owner")

Current City Facilities Fee Credit Balance: _____

Applicable Development Agreement (the "DA"): The Development Agreement between the City of Lake Forest and Shea Baker Ranch Associates, LLC, dated _____, 2010

This statement acknowledges that, pursuant to Paragraph B.3.b. of Exhibit B of the DA has earned _____ Residential Units of City Facilities Fee Credits. Each City Facilities Fee Credit may be redeemed as payment in full (in lieu of cash payment) for the City Facilities Fee otherwise due and payable upon the issuance of a residential building permit.

The future redemption of credits will be acknowledged through the issuance of a Fee Credit Letter signed by Owner and the City. The Fee Credit Letter will be in the form required by the DA.

Future changes in the balance of Owner's City Facilities Fee Credit shall be reflected in a new Fee Credit Letter and a new City Facilities Fee Credit Statement reflecting any additions or subtractions from the credit balance reflected in this statement.

Acknowledged:

City

Date

Acknowledged:

Owner

Date

ATTACHMENT 3 TO EXHIBIT B
City Facilities Fee Credit Letter Form

**ATTACHMENT 3
CITY FACILITIES FEE CREDIT LETTER**

Date:

Director of Development Services
City of Lake Forest
Address
Lake Forest, CA

City Facilities Fee Credit Letter #_____

Summary Statement

Owner: _____ ("Owner")
Original City Facilities Fee Credit Statement dated: _____
Original City Facilities Fee Credit Balance: _____
Total of City Facilities Fee Credits Earned Since Original Statement (Inclusive of
City Facilities Fee Credit Letters ____ through ____): _____
Number of City Facilities Fee Credits Applied with this Letter: _____
Remaining City Facilities Fee Credits: _____

Dear Director of Development Services::

Please apply City Facilities Fee Credits in the amount of _____, which shall be
in full satisfaction of the City Facilities Fee obligation for Lots/Units: _____ of Tract:
_____.

By signing this letter, both the City and Owner acknowledge the application of these City
Facilities Fees Credits and agree to the accuracy of this Fee Credit Letter. Owner also
acknowledges receiving a City Facilities Fee Credit Statement from the City on this
same date which reflects this current application of City Facilities Fee Credits.

Acknowledged:

Owner

Date

Acknowledged:

City

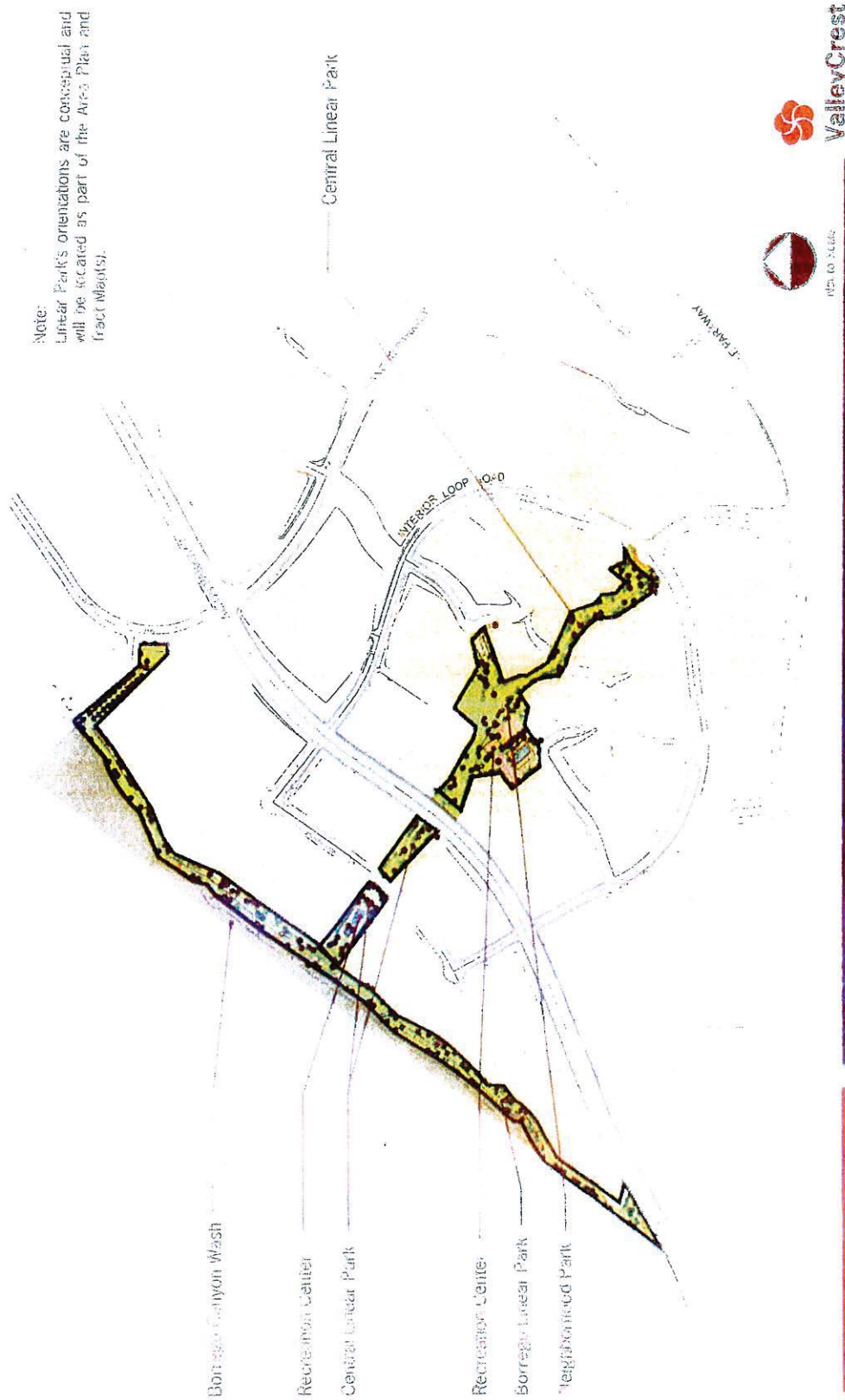
Date

ATTACHMENT 4 TO EXHIBIT B

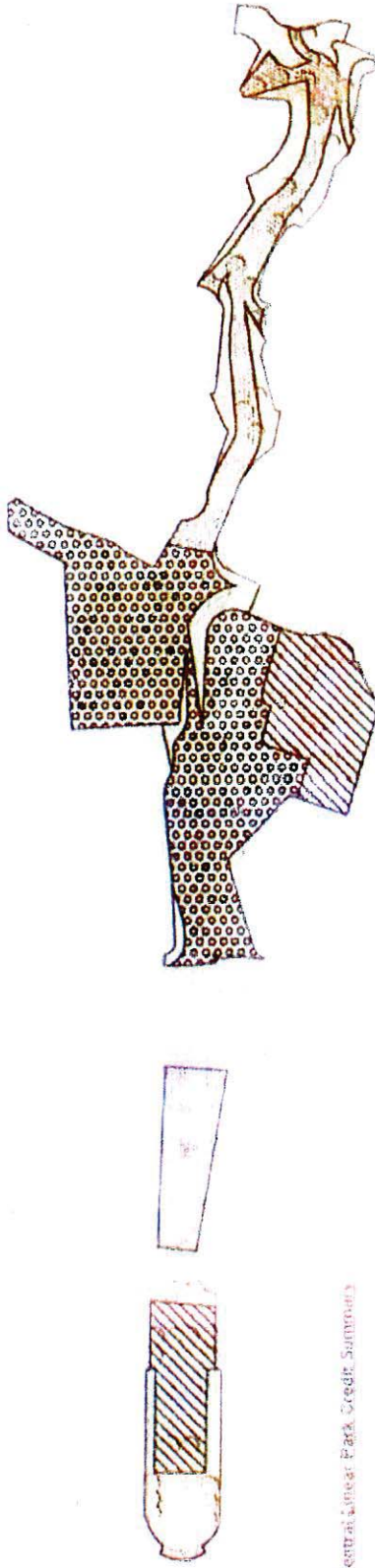
Central Linear Park and Borrego Linear Park

Attachment 4
Central Linear Park and Borrego Linear Park

Linear Parks Orientation



Central Linear Park Credit Summary



	Total Acres	Credit Acres *	Total Acres	Credit Acres *
100% Park Credit Area	8.04	5.04	1.55	1.15
25% Park Credit Area	0.35	0.35	0.60	0.15
0% Park Credit Area	0.07	0.07	1.36	0.08
			3.49	1.40
			6.09	3.79
			0.57	0.57
			4.36	4.36

Notes:
 The location and configuration of the Central Linear Park is generally depicted and will be finalized as part of the Area Plan and Tract Maps.

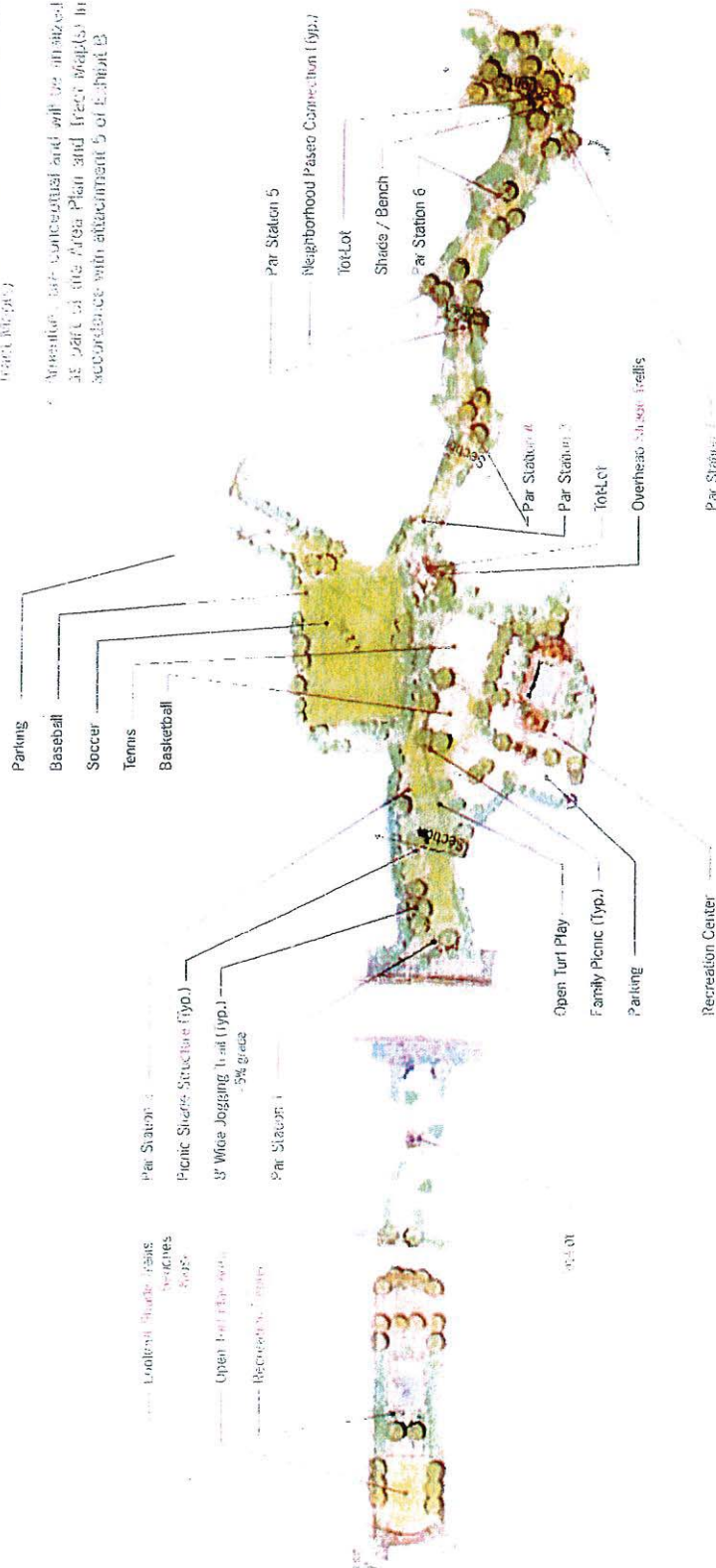
1. All acreages are based on conceptual drawings and are intended to be an estimate of the park credit calculation.
2. To be determined in accordance with Section 6.0 of Exhibit B.

Central Linear Park Concept Plan

Notes

location, configuration, and programming of this Central Linear Park are generally dictated and will be located as part of the Area Plan and Land Use Plan.

* Alternative 1a is conceptual and will be analyzed as part of the Area Plan and Tract Maps in accordance with attachment 5 of Exhibit B.



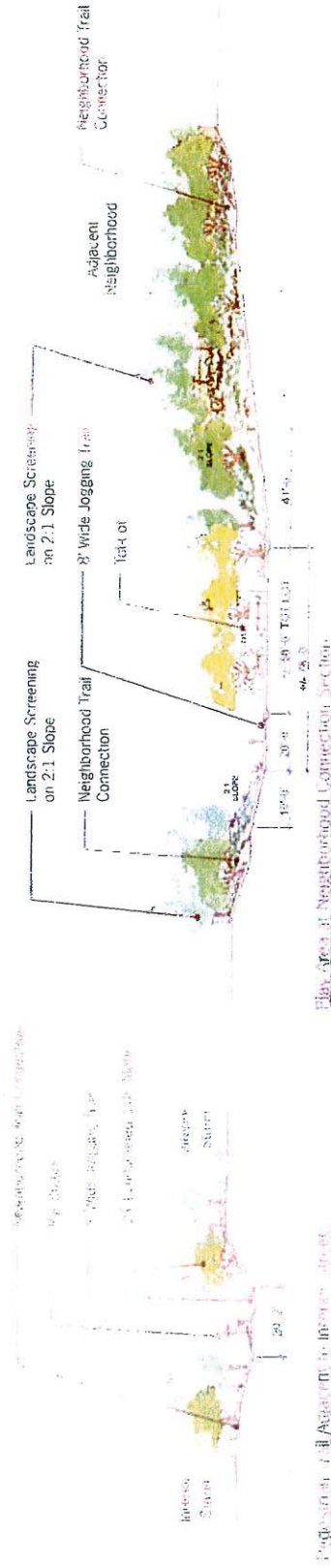
316-501-1111



ValleyCrest

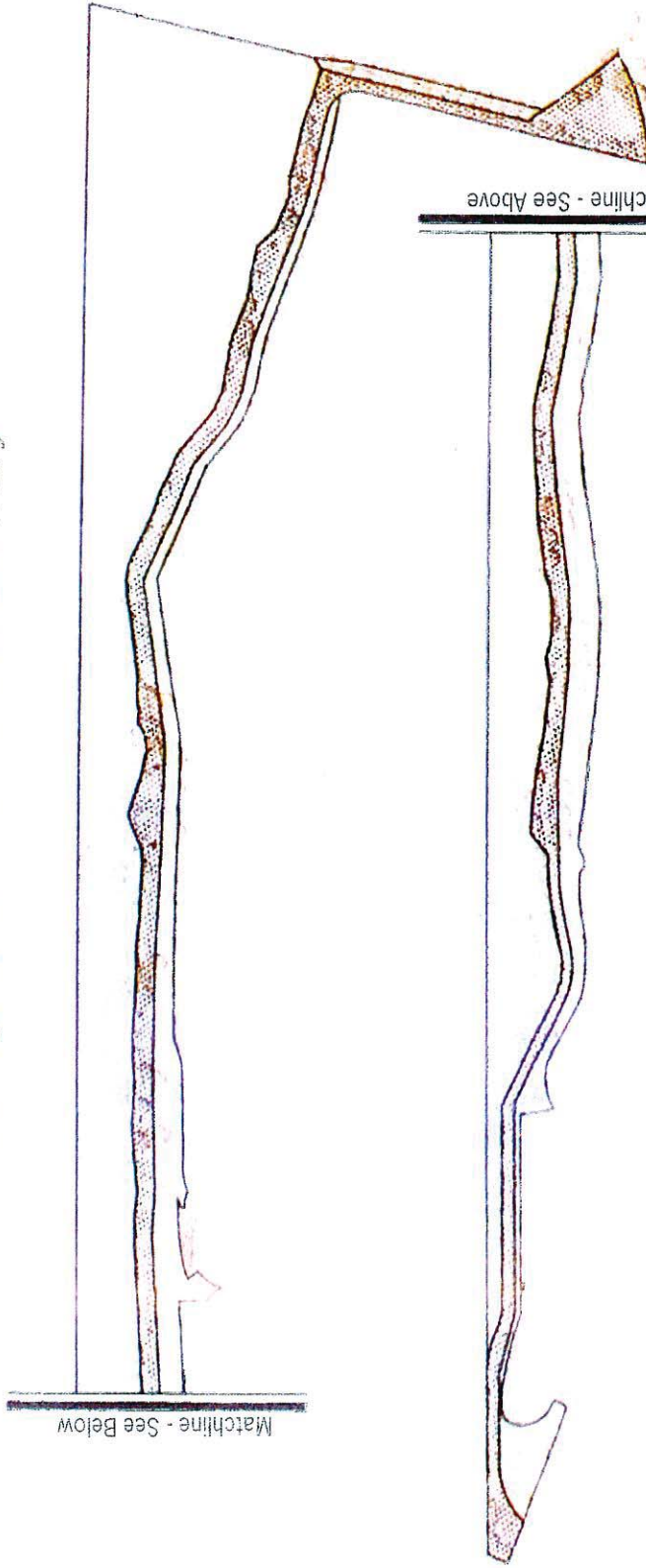
Design Group
Project No. 17374
Date: June 4, 2010
Revised: June 10, 2010
Revised: June 28, 2010

Central Linear Park Conceptual Cross Sections



Note:
Cross sections and dimensions are conceptual and will be finalized as part of the Area Plan and Final Maps in accordance with CDMB 6.

Borrogo Linear Park Credit Summary



Borrogo Linear Park Credit Summary

Total Acres Credit Acres

Borrogo Linear Park (24.03 Acres)

100% Park Credit Area

25% Park Credit Area

Borrogo Linear Park (24.03 Acres)

24.03

0.00

24.03

0.00

24.03

0.00

24.03

0.00

24.03

0.00

24.03

0.00

24.03

0.00

24.03

0.00

24.03

0.00

Notes

1. The Location and configuration of the Linear Park is generally depicted and will be located as part of the Area Plan and Final Map(s).
2. Acres are based on aerial photos and drawings and are intended to be an estimate of the Park Credit calculation.
3. To be determined in accordance with Section C of Exhibit B.



North Arrow



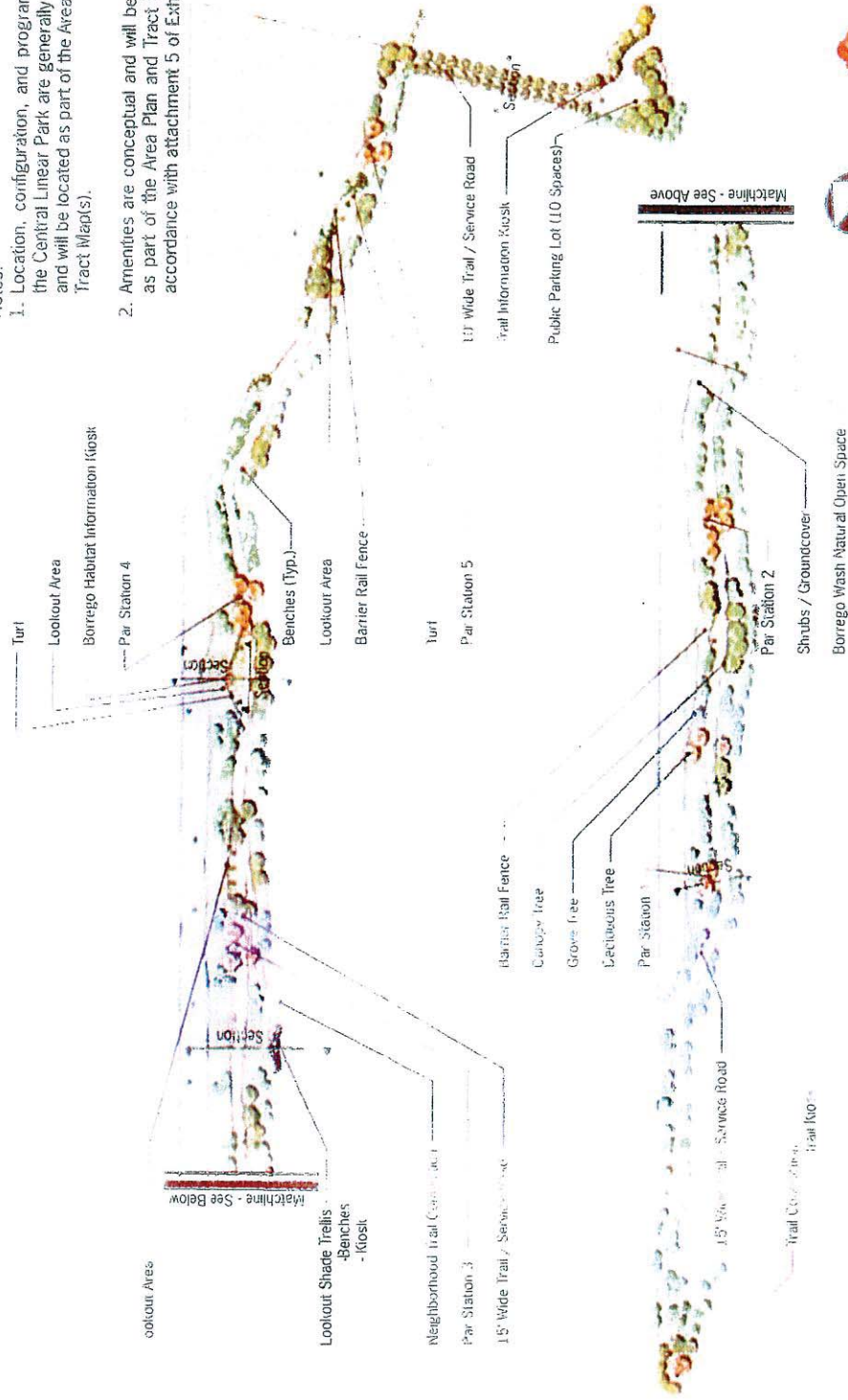
ValleyCrest

Design/Drawn: J. J. J. J.
 Date: 10/1/2010
 Revised: 10/1/2010
 Review: 10/1/2010
 Page: 3 of 7

Borrego Linear Park Concept Plan

Notes:

1. Location, configuration, and programming of the Central Linear Park are generally depicted and will be located as part of the Area Plan and Tract Map(s).
2. Amenities are conceptual and will be finalized as part of the Area Plan and Tract Map(s) in accordance with attachment 5 of Exhibit B.

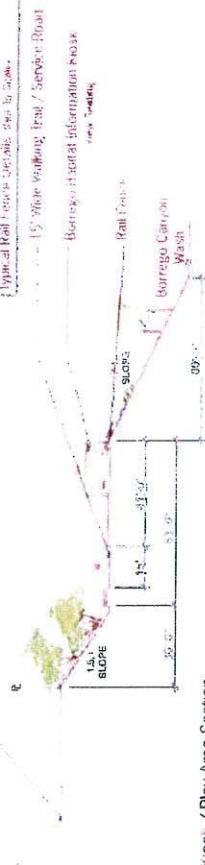


Not to Scale



ValleyCrest
Design Group
Project No. 171734
Date: June 4, 2010
Revised: June 10, 2010
Revised: June 28, 2010

Figure 1



Note:
Cross sections and dimensions are conceptual and will be
realized as part of the Area Plan and/or a map(s) in accordance
with Exhibit B.



ValleyCrest

DesignGroup

Project No: 173735

Date: June 4, 2010

Revised: June 10, 2010

Revised: June 28, 2010

Page 7 of 7

ATTACHMENT 5 TO EXHIBIT B
Neighborhood Park Improvement Criteria

ATTACHMENT 5
NEIGHBORHOOD PARK IMPROVEMENT CRITERIA

Neighborhood Park Criteria

The capitalized terms used in this Attachment shall have the same meaning as those terms have in this Agreement. Credit toward the Park Dedication Requirement shall be as set forth in Paragraph C1 of Exhibit B.

Neighborhood Parks should contain consolidated parcels with appropriate area devoted to active recreation such as ball fields, multi-purpose fields and open turf, game courts, tot lots, and picnic facilities. Neighborhood Parks should be located near the center of a neighborhood. Easy access should be provided to pedestrians, bicyclists, and maintenance and public safety vehicles. Neighborhood Parks should not be separated from their user populations by major highway, railroads, or other impassable obstacles. A Neighborhood Park is encouraged to be situated adjacent to or near schools, greenbelts, open space linkages, or other community open space/recreational facilities to facilitate an integrated open space system. Although Neighborhood Parks are designed to attract users from a very local service radius, they may also be utilized by all residents of the City of Lake Forest. Final design of the Neighborhood Parks is subject to the review and approval with conditions from the Parks and Recreation Commission and Planning Commission and Parks and Recreation Commission, and fulfillment of design and permit conditions for the projects.

All Neighborhood Parks must include:

- Site Drainage
- Utility Connections (water and electric)
- Hardscape, Sidewalks, minimum 5' wide, concrete
- Hardscape, Mow-strip, concrete
- Turf, sod
- Shrubs, minimum 5 gallon size
- Trees, minimum 15-gallon size
- Mulch/Soil Preparation
- Automatic irrigation system with controller
- Automatic security lighting system with controller
- ADA universal signage
- City standard park identification sign and park rules signs
- On-site Parking area including van accessible ADA parking (for sites 3 acres or greater)
- ADA accessible path of travel with concrete paving under tables and seating.
- Athletic field and/or courts (for sites 3 acres or greater)
 - 1 Multi-Purpose Field
 - 1 Tennis Court, Volleyball Court or Basketball Court
 - Spectator seating

- Tables, benches, trash cans, drinking fountains, and barbecues (for sites 3 acres or greater)
 - 1 group BBQ with 4 tables or 2 family BBQs with 2 tables per BBQ
 - 1 drinking fountain per field, court and picnic area
 - 1 Shade Structure for group recreation purposes, minimum 50% shade
- Play lots appropriate by age group
 - 1 Tot Area
 - 1 ages 6 to 12 Play area (for sites 3 acres or greater)
 - 1 adjacent bench

For neighborhood park sites greater than 0.5 acres but less than three acres, the following criteria will apply to the area credited for parkland:

1. No slopes greater than 6:1.
2. No vertical elevation drop greater than 3 feet
3. Minimum of 1 hard court or other active recreation user amenity.

Linear Park Criteria

Linear parks shall serve as both a stand alone amenity and a connection between other public spaces. The primary purposes of Linear Parks are for pedestrian exercise, relaxation and connectivity to other active public areas. The conceptual design for the Linear Parks is depicted on Attachment 4 to Exhibit B (full size copies of these conceptual plans are on file with the City).

Final design of the Linear Parks is subject to the review and approval of the Planning Commission and Parks and Recreation Commission, but shall be in substantial conformance with the Concept Plan. All Linear Parks shall be fully improved with landscape and irrigation. The trail surface must be suitable for walking and jogging. Rest areas with benches and shade trees, and other amenities such as play areas, lawn areas, barbeque areas and fitness stations will be provided generally as shown on the Concept Plan, although final locations and specifications may vary.

Borrego Linear Park. The Borrego Linear Park shall run continuously from a connection on Towne Center Drive at the northeast corner of the Property and southwesterly along the Borrego, with a connection back to the public sidewalk on Alton Parkway at Commercentre Drive. The multi-purpose trail will support biking, jogging, walking and act as a service road for OCFCD. The road surface shall be subject to final review and approval by OCFCD and the City.

Central Linear Park. The Central Linear Park provides connectivity to the public parks and private recreation areas centered in the community. The Central Linear Park trail will support walking and jogging.

ATTACHMENT 6 TO EXHIBIT B

School Agreement

Attachment 6
School Agreement

RECORDING REQUESTED BY
FIRST AMERICAN TITLE INSURANCE CO.
NATIONAL COMMERCIAL SERVICES

ACOM-03/P.S

Recording Requested by
and when recorded mail to:

Saddleback Valley Unified School District
25631 Peter Hartman Way
Mission Viejo, CA 92691

Attn: Assistant Superintendent of Business
Services

This Document was electronically recorded by
First American National Commercial

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

NO FEE
2010000273358 02:09pm 06/10/10
93 401 A12 21
0.00 0.00 0.00 0.00 60.00 0.00 0.00 0.00

Space above this line for Recorder's use only.
Exempt from recording fee pursuant to Gov. Code § 6103.

**SCHOOL FACILITIES FUNDING AND MITIGATION AGREEMENT
BY AND BETWEEN SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT
AND SHEA/BAKER RANCH ASSOCIATES, LLC**

THIS SCHOOL FACILITIES FUNDING AND MITIGATION AGREEMENT ("Mitigation Agreement") is made and entered into as of this 14 day of MAY, 2008 by and between SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT of Orange County, California ("District"), a school district organized and existing under the laws of the State of California ("State") and SHEA/BAKER RANCH ASSOCIATES, LLC, a California limited liability company ("Shea Baker" or "Owner"). The District and Owner may hereinafter be referred to individually as "Party" and collectively as "Parties."

RECITALS

A. The District is responsible for providing classroom capacity for students in kindergarten through the twelfth grade ("K-12") who reside within the District.

B. The City of Lake Forest (the "City") is considering a general plan amendment (the "GPA") for approximately 838 acres of land located within both the City and the 65 dB CNEL Noise Contour boundaries impacted by the former USMC Air Station at El Toro, commonly referred to by the City as the Opportunities Study Area (the "OSA"). The City General Plan Amendment ("GPA"), if adopted by the City, will change the permitted uses for all properties within the GPA boundaries from predominantly commercial to predominantly residential.

C. Shea Baker is the owner of the undeveloped property within the OSA which is described in Exhibit A and depicted on Exhibit B (the "Property"). If the GPA is approved, Shea Baker intends to develop the Property with residential dwelling units (each a residential dwelling unit within the OSA is referred to as a "Unit") and commercial and retail space, as well as possible governmental and park uses, all as described in Exhibit C (the "Project").

D. The purpose of this Mitigation Agreement is to provide the District with funds to be used for improvements of school facilities. (collectively, the "School Facilities").

THIS INSTRUMENT FILED FOR RECORD BY
FIRST AMERICAN TITLE COMPANY AS AN ACCOMMODATION
ONLY IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION
OR AS TO ITS EFFECT UPON THE TITLE

E. The funds for School Facilities represent a substantially greater investment by Shea Baker in school facilities than is required by California law.

F. The District and Owner have agreed that given the uncertainties of the timing and amount of State funding for the School Facilities, it is in their mutual best interest to enter into this Mitigation Agreement to provide a local source of funding for the School Facilities in excess of the amount Owner would otherwise be required to provide in connection with the development of the Property.

G. The District acknowledges that it has an obligation to utilize its best efforts to pursue funding from the State for the School Facilities ("State Funding") to the extent herein provided.

H. Shea Baker's performance of this Mitigation Agreement is intended to constitute complete mitigation of the impact of the development of the Property upon District in lieu of any fees which the District might impose in connection with such development pursuant to Education Code Section 17620 or Government Code Sections 65970, *et seq.* and 65995, *et seq.* or any other applicable law and in lieu of any other school facilities requirements which the District, the County of Orange, the City of Lake Forest or any other Public Agency might be authorized to impose pursuant to applicable existing or future law.

AGREEMENT

1. Incorporation of Recitals. All of the foregoing Recitals are correct and are incorporated in this Mitigation Agreement by reference.

2. Purposes of Mitigation Agreement. The purpose of this Mitigation Agreement is to augment funding for the School Facilities. By entering into this Mitigation Agreement and complying with its terms, Shea Baker shall be deemed to have fulfilled and mitigated its entire obligation to assist in funding School Facilities to house K-12 students enrolled in District schools and residing within the boundaries of the Project (the "Project Students") to be generated by development within the boundaries of the Property. Project residential Units (as defined in this Mitigation Agreement), non-residential property, or any other development undertaken within the boundaries of the Property, regardless of the size and type actually constructed, will be fully mitigated and not subject to any school fees or other financial obligation owing to the District, except as otherwise provided for in this Mitigation Agreement.

3. Formation of CFD. The Parties intend that a Community Facilities District ("CFD") will be formed by the City to finance the School Facilities and other public improvements to be provided in conjunction with development of the Project, the specific parameters of such CFD financing are anticipated to be set forth in a Development Agreement to be entered into between Shea Baker and the City. Shea Baker shall petition the City for the formation of the CFD in accordance with the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (Government Code Section 53311, *et seq.*) (the "Act") and this

Mitigation Agreement. The Parties will cooperate to the maximum extent possible in the formation of the CFD.

4. Alternative to City Formation. If, for any reason, (i) the CFD is not formed by the City, (ii) a CFD formed by the City does not include all of the required funding for the School Facilities, or (iii) the City does not adopt a resolution of formation consistent with this Mitigation Agreement before the issuance of a building permit for the first Unit within the Project, then, at the option of the District, either:

(a.) The District shall form a CFD sufficient to fully finance the financial obligations of the Owner set forth in Sections 7 and 8 of the Mitigation Agreement; or

(b.) This Mitigation Agreement shall terminate and the Project shall be subject to statutory school fees only.

Should the District elect to form a CFD pursuant to Section 4(a) above, such CFD shall be subject to the CFD parameters set forth in Exhibit D.

5. Joint Community Facilities Agreement. The District shall cooperate to enter into a Joint Community Facilities Agreement (the "JCFA") by and among City, District and Shea Baker to authorize funding of the School Facilities through the City CFD. The JCFA shall be consistent with this Mitigation Agreement and District shall reasonably cooperate to allow the terms of the JCFA to comply with the CFD parameters agreed upon between Owner and the City or Owner and the District, as applicable. District shall cooperate to enter into the JCFA prior to formation of the City CFD.

6. Covenants. The District will issue on a timely basis (i) a certificate issued by the District pursuant to Education Code Section 17620(b) acknowledging the fact that the recipient thereof has complied with all requirements of the District for the payment of statutory school fees/alternative school facility fees/mitigation payments and (ii) a certificate issued by the District acknowledging that adequate provisions have been made for School Facilities (the "Certificate Of Compliance") which are sought by the Owner or its successors and assigns for any Unit, non residential property or any other development undertaken within the boundaries of the Property. Therefore, except as expressly provided with this Mitigation Agreement, and provided that Shea Baker is not in breach of this Mitigation Agreement, the District covenants that, with respect to any present or future development within the boundaries of the Property, it will not under any circumstances or at any time:

(a) exercise any power or authority (whether under Section 17620 of the California Education Code or any other provision of law) to levy or impose a fee, charge, dedication, or other requirement for the purpose of providing, funding, or financing the School Facilities;

(b) require the City or any other governmental entity to exercise or cooperate in the exercise of, the power under Title 7, Division 1, Chapter 4.7 of the California Government Code (commencing with Section 65970) or any other provision of

law, to require the dedication of land, the payment of fees in lieu of the dedication of land, or both for School Facilities.

- (c) oppose any development within the boundaries of the Property on the basis of inadequate School Facilities;
- (d) seek mitigation or conditions of approval of any type for any development within the boundaries of the Property, including, but not limited to, mitigation or conditions to require the payment of developer fees or other money, the dedication of land, or the application of an assessment or requirement of any nature against Shea Baker or any portion of the Property, even if otherwise permitted by the present or future State law, rulings, regulations, or court decisions if any of the proceeds or such assessment or requirement will be used to finance or fund the School Facilities;
- (e) issue bonds (excluding CFD bonds under the Act pursuant to this Mitigation Agreement), or incur any other form of indebtedness, payable from taxes or assessments of any kind (other than the District's portion of the existing property taxes) levied on the Property, the proceeds of which are to be used in whole or in part, directly or indirectly, for funding or financing the School Facilities until such time as the Units approved and to be constructed have been constructed and sold. The limitation contained in this clause (e) shall not be applicable to levying of: (1) *ad valorem* real property taxes, or (2) District wide local general obligation bonds taxes or taxes from a school facilities improvement district with respect to real property within the District's boundaries or taxes or assessments which are necessary for new School Facilities or the rehabilitation or reconstruction of existing School Facilities;
- (f) levy special taxes, require prepayment of special taxes or seek payment of any type from the Property relating to the District's Community Facilities District No. 86-1.

7. Mitigation Amounts and Funding of School Facilities.

(a) Mitigation Amounts. Owner shall be responsible for payment to the District in the amount of Eight Thousand Five Hundred and Forty Dollars (\$8,540.00) per Unit payable no later than the issuance of the building permit for such Unit.

(b) Source of Payment. The mitigation amounts shall be paid by Owner in cash or from CFD bond proceeds. If Owner paid the mitigation amount in cash and CFD bond proceeds are subsequently paid to the District, Owner shall be reimbursed for such cash payments of mitigation amounts to the extent received by District from CFD bond proceeds. If CFD bond proceeds are available and are paid to the District as an advance payment for mitigation amounts not yet due, then such amounts shall serve as a corresponding credit toward future mitigation amounts required to be paid by the Owner based on the mitigation amount at the time of receipt of CFD funds by the District.

8. State Funding.

(a) Pursuit of State Funds. The District shall use its best efforts to apply for and secure all reasonably available State and federal funding to provide additional funding for the School Facilities. The District will continue to apply for State and federal funding until the District determines that receipt of such funding is no longer reasonably practicable for the School Facilities. In the event the District determines that a potential source of funding is not reasonably practicable to the District, the District shall explain such reasons to Owner. The District shall reasonably consider funding sources proposed by Owner, however, the District reserves the right to determine if such proposed funding source is reasonably practicable to the District.

(b) Use of State Funds. The District shall maintain a separate accounting of all State funds received with respect to the School Facilities, and shall provide an annual report to Owner of all State funds received and State funding used to fund the School Facilities until all the School Facilities are constructed.

9. Contingent Upon Approval of GPA. This Mitigation Agreement shall become effective only after the GPA and zone change have been approved by the City, a Development Agreement has been signed between the City and Owner in connection with the GPA and zone change, and all periods for legal challenge have expired without challenge. Should all or any part of the GPA, zone change or Development Agreement be invalidated by a court of law, Owner may, at its sole option, terminate this Mitigation Agreement at any time between (i) the date of the order or judgment which creates that invalidation (the "Judgment Date") and (ii) 180 days after the expiration of the time during which a party may appeal that judgment or order or the termination of all appeals from that judgment or order, whichever comes later.

10. Mitigation Agreement Unaffected By Changes in Law. The Parties agree that each Party has negotiated in good faith to reach accord on this Agreement, and as such, the Agreement is a legally binding contract between the Parties, enforceable in accordance with its terms. The Parties further agree that, to the maximum extent permitted by law, this Agreement shall not be affected, modified, or annulled by any subsequent change in local, state, or federal law.

11. Project Students Attend Neighborhood Schools. The District shall use its best efforts to insure that all K-12 Project Students have the option to attend the applicable school closest to their neighborhood that is not overburdened. The District will expend as soon as reasonably feasible all school facility funds received pursuant to this Agreement to construct or make improvements to schools which will be attended by Project Students.

12. Representations, Warranties and Covenants of the District.

The District represents, warrants, and covenants with the Owner that:

- (a.) The District is a school district organized and operating pursuant to the Constitution and laws of the State and has all necessary power and authority to enter into and perform its duties under this Mitigation Agreement and, when executed and delivered by the Parties, this Mitigation Agreement will constitute the legal, valid, and binding obligation of the District enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, or other laws affecting enforcement of creditors' rights generally.
- (b.) The execution and delivery by the District of this Mitigation Agreement and compliance by the District with its provisions will not conflict with, or constitute a violation of or default under, the Constitution of the State or any existing law, charter, ordinance, regulation, decree, order or resolution applicable to the District, and will not conflict with or result in a violation or breach of, or constitute a default under, any contract, agreement, indenture, mortgage, lease or other instrument to which the District is subject or by which it is bound.
- (c.) To the best knowledge of the District there is no action, suit, or proceeding of any court or governmental agency or body pending or threatened against the District in any way contesting or affecting the validity of this Mitigation Agreement or contesting the powers of the District to enter into or perform its obligations under this Mitigation Agreement or in which a final adverse decision could materially adversely affect the operations of the District or the consummation of the transactions contemplated by this Mitigation Agreement.
- (d.) The District is not in breach of or default under any applicable law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or is otherwise subject, which breach or default would materially adversely affect the District's ability to enter into or perform its obligations under this Mitigation Agreement, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument and which would materially adversely affect the District's ability to enter into or perform its obligations under this Mitigation Agreement.

13. Representations, Warranties, Covenants of Owner.

Owner represents, warrants, and covenants with the District that:

- (a.) Owner has all necessary corporate power and authority to enter into and perform its duties under this Mitigation Agreement and, when executed and delivered by the Parties, this Mitigation Agreement will constitute the legal, valid, and binding obligation of Owner, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, or other laws affecting enforcement of creditors' rights generally.

- (b.) The execution and delivery by Owner of this Mitigation Agreement and compliance by Owner with its provisions will not conflict with, or constitute a violation of or default under, the Constitution or laws of the State of California, or any existing law, charter, ordinance, regulation, decree, order or resolution applicable to Owner, and will not conflict with or result in a violation or breach of, or constitute a default under, any agreement, indenture, mortgage, lease, or other instrument to which Owner is subject or by which it is bound.
- (c.) Owner will provide written notice to merchant builders or other successors or assigns of Owner of the existence of this Mitigation Agreement and their obligation to be bound by its terms.
- (d.) Owner will not sue the District or willfully join in any lawsuit or actively participate in any lawsuit against the District regarding the validity of the CFD once it has been established, provided that it has been established in accordance with this Mitigation Agreement. This Mitigation Agreement shall not, however, prevent Owner from challenging in any manner (i) the levy of special taxes, if that levy is not in accordance with the Act or the applicable rate and method of apportionment of special taxes, or (ii) the application of proceeds of bonds, if such proceeds are not applied in accordance with this Mitigation Agreement.
- (e.) Owner will cooperate with the District in the District's applications for State funds relating to the School Facilities.

14. Assignability of Mitigation Agreement. All of the covenants, stipulations, promises, and agreements contained in this Mitigation Agreement by or on behalf of, or for the benefit of, either of the Parties shall bind or inure to the benefit of the successors and assigns of the respective Parties.

15. Binding on Successors; No Third Party Beneficiaries. This Mitigation Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto. This Mitigation Agreement is entered into solely for the benefit of the Parties and the successors, transferees and assigns of all Parties. Other than District and Owner and their successors, transferees and assigns, no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Mitigation Agreement.

16. Binding on Entire Agreement. This Mitigation Agreement contains the entire agreement and understanding concerning the funding of school facilities to house students generated by the development of the Project and supersedes and replaces all prior negotiations and proposed agreements, written and oral, except as they are incorporated into this Mitigation Agreement. The Parties acknowledge that neither the other Party nor its agents nor attorneys have made any promise, representation or warranty whatsoever, express or implied, not contained herein to induce the execution of this Mitigation Agreement. Each Party further and acknowledges that this Mitigation Agreement not been executed in reliance upon any promise, representation or warranty not contained herein.

17. Amendments Must Be In Writing. This Mitigation Agreement may not be amended, except by a writing signed by all of the Parties. The Parties recognize that it may be necessary to make revisions to this Mitigation Agreement after execution by the Parties. Therefore, the District delegates to the Superintendent the authority to approve amendments to this Mitigation Agreement which do not substantially affect the terms of this Mitigation Agreement.

18. Disputes To Be Arbitrated. The Parties desire to resolve any disputes as to the meaning of any portion of this Mitigation Agreement or the rights or obligations of District or Owner under this Mitigation Agreement as quickly as possible. Therefore, any such disputes shall be resolved by binding arbitration conducted by a mutually agreed upon arbitrator. If District and Owner are unable to agree on the arbitrator within thirty (30) days of the receipt of a request for arbitration, they shall request that the presiding judge of the Orange County Superior Court designate one. District and Owner shall each pay one-half the cost of the arbitration and each shall be responsible for its own attorneys' fees and costs as to any such arbitration.

19. Recovery of Litigation Expenses, Including Attorneys' Fees. Except as provided in Section 17, if it becomes necessary to enforce any of the terms of this Mitigation Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of litigation in addition to any other relief to which it may be entitled.

20. Interpretation Guides. In interpreting this Mitigation Agreement, it shall be deemed that it was prepared by the Parties jointly and no ambiguity shall be resolved against either Party on the premise that it or its attorneys were responsible for drafting this Mitigation Agreement or any provision thereof. Headings used in this Mitigation Agreement are for convenience and ease of reference only and are not intended nor may be construed as a guide to interpret any provision of this Mitigation Agreement.

21. Due Authority of Signatories to Execute Agreement. Each individual signing this Mitigation Agreement warrants and represents that he or she has been authorized by appropriate action of the Party which he or she represents to enter into this Mitigation Agreement on behalf of the Party.

22. Due Notices. All notices, demands and between the Parties shall be given by personal delivery, registered or certified mail, postage prepaid, return receipt requested, Federal Express or other reliable private express delivery, or by facsimile transmission. Such notices, demands or communications shall be deemed received upon delivery if personally served or sent by facsimile or after three (3) business days if given by other approved means as specified above. Notices, demands and communications shall be sent:

To District:

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT
25631 Peter Hartman Way
Mission Viejo, CA 92691
Fax No.: 949-454-1039
Attn: Assistant Superintendent of Business Services

With a copy to:

BOWIE, ARNESON, WILES & GIANNONE
4920 Campus Drive
Newport Beach, CA 92660
Fax No.: (949) 851-2014
Attn: Wendy Wiles

To Owner:

Shea Properties, LLC
130 VANTIS, SUITE 200
ALISO VIEJO CA 92656
ATTN: GENE SPINDLER

Fax No.: (949) 389-7466

With a copy to:

Manatt, Phelps and Phillips
695 Town Center Drive, 14th Floor
Costa Mesa, CA
Attn: Roger A. Grable
Tim Paone

and

Baker Ranch Properties
P.O. Box 7974
Newport Beach, CA 92658
Attn: Larry Tucker

23. Time. Time is of the essence of each and every term, provision, and condition of this Mitigation Agreement.

24. SB 165 Disclosure. The Parties recognize that California SB 165, Chapter 535 of the Statutes of 2000, effective on January 1, 2001, provides disclosure and reporting requirements for any local bond measure that is subject to voter approval and which would provide for the sale of the Bonds by a local agency. Owner agrees to fully and completely cooperate with District and CFD in meeting the requirements of SB 165.

25. California Law Governs Mitigation Agreement. This Mitigation Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California.

26. Counterparts. This Mitigation Agreement may be signed in one or more counterparts which, taken together, shall constitute one original document.


27. Exhibits. All Exhibits attached hereto are incorporated into this Mitigation Agreement.

28. Recordation. Upon execution hereof, this Mitigation Agreement may be recorded by District.

[Remainder of page is blank.]

IN WITNESS WHEREOF, this Mitigation Agreement is agreed and entered into as of the date first written above.

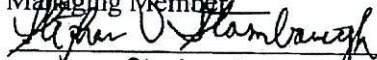
**SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT**


By: 
Assistant Superintendent of Business Services

SHEA/BAKER RANCH ASSOCIATES, LLC
a California limited liability company,

By: Shea Baker Ranch, LLC
a California limited liability company
Its: Managing Member

By: J.F. Shea Co, Inc., a Nevada Corporation
Its: Managing Member

#6 By: 
Name: Stephen D. Stambaugh
Its: Assistant Secretary

By: 
Name: Colm Macken
Its: Vice President

[PLEASE HAVE ALL SIGNATURES NOTARIZED]

APPROVED AS TO FORM:

BOWIE, ARNESON, WILES & GIANNONE,
Legal Counsel to the SADDLEBACK
VALLEY UNIFIED SCHOOL DISTRICT

By: _____

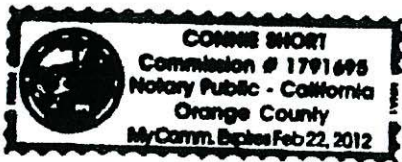
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE

On Aug. 12, 2008 before me, Connie Short, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared STEPHEN D. STAMBAUGH &
COLM MACKEN
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person (S) whose name (S) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature (S) on the instrument the person (S), or the entity upon behalf of which the person (S) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Connie Short
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

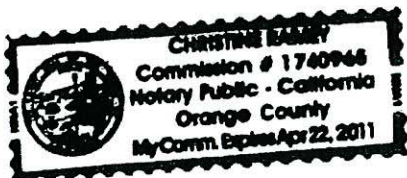
RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE

On August 27, 2008 before me, CHRISTINE RAMEY Notary Public
Date Here Insert Name and Title of the Officer
personally appeared STEPHEN L. McMAHON
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person~~s~~ whose name~~s~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~ies~~, and that by his/~~her/their~~ signature~~s~~ on the instrument the person~~s~~, or the entity upon behalf of which the person~~s~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here